

## MEDIATION AS A COMPLETION EFFECT ON TRAFFIC ACCIDENT ACTION THAT INVOLVES DEATH

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### ABSTRACT

*The process of mediation / peace against traffic accidents which results in death victims can be carried out by parties (suspected suspects with families of victims) outside the legal process. Settlement of criminal cases by using alternative dispute resolution can only be implemented if there is an agreement from the parties, both the victim's family and the suspect or the party to the dispute, but if there is no agreement, it will still be resolved by applicable legal procedures. The police are not authorized to handle peace between the alleged perpetrators and the families of the victims. If the mediation efforts offered by the perpetrators have obtained the results of a peace agreement with the families of the victims, then the results of the peace agreement will be poured into a letter of application addressed to the police so that the case is not proceeded in other words. mediation efforts. Peace is considered to reflect a sense of justice between the perpetrator and the family of the victim, so that to stop the legal process the investigator uses discretionary authority.*

Key words: Mediation, Traffic Accident Crime, Death.

### A. INTRODUCTION

The traffic in Law Number 22 Year 2009 is defined as the movement of vehicles and people in road traffic space, while traffic cross roads is defined as infrastructure intended for moving vehicles, people or goods in the form of roads and facilities. supporters. The government has a goal to realize road traffic and transportation that is safe, secure, right, smooth, orderly, organized, comfortable and efficient through traffic management and traffic engineering. The procedures for traffic on the road are regulated by laws and regulations concerning the direction of traffic, priority in using roads, lanes, and traffic flow and controlling flows at intersections.

In general, transportation is the movement of people, goods, and information from one place to another safely, comfortably, quickly, cheaply and in accordance with the environment to meet the needs of human life.

The development of transportation technology, which has increased rapidly, has led to higher rates of traffic accidents. As a result of technological advancements, on the one hand, the reach and range of transportation has become increasingly widespread, on the other hand being a very serious cause of death in modern times. This situation is getting worse considering the lack of public awareness about traffic safety, and the slow or inappropriate handling of victims due to traffic accidents.

With the advances in science and technology at this time, especially with transportation equipment which at any time in management and control requires serious care. The possibility of violations of Article 359 and 360 of the Criminal Code in the future will increase.

Traffic accidents that often occur due to carelessness and neglect of the driver. Such carelessness often results in traffic accidents, the accident also causes casualties, both victims suffer minor injuries, serious injuries and death victims. This traffic accident is a crime. Crime is a behavior that is threatened with a criminal offense that is related to an error and is carried out by someone who is capable of being responsible. Traffic Accident Elements are classified in the form of negligence (culpa) offenses. Generally the omission consists of two parts, namely not being careful in carrying out an action in addition to being able to guess the consequences of the action. But even if an act is carried out carefully, there may still be negligence. Deaths caused by traffic accidents certainly have rules that govern them, this is generally regulated in Article 359 of the Criminal Code and Law Number 22 of 2009 concerning Road Traffic and Transportation in particular.

The criminal threat in the case of a traffic accident that causes death is regulated in Article 359 of the Criminal Code, namely: "Whoever causes his wrongdoing causes the death of a person sentenced to imprisonment for five years or confinement for a period of one year".

In Article 310 of Law Number 22 Year 2009 concerning Road Traffic and Transportation paragraph (4) affirms, "In the event of an accident as referred to in paragraph (3) which results in another person dying, shall be punished with imprisonment for a maximum of 6 (six) years and / or a maximum fine of Rp. 12,000,000 (twelve million rupiah) ".

Based on the Criminal Code in conjunction with Law Number 2 of 2002 concerning the Police, the institution which has the first authority in carrying out legal proceedings against traffic accidents resulting in the death of the police is by doing it at the crime scene. If there is a case at the scene of a crime or in the place of a traffic accident, the police can continue at the stage of the investigation to determine whether the judge is responsible for his actions.

Traffic accidents that result in the death of the victim must be carried out by legal process according to the applicable law starting from the police investigation, prosecution by the prosecutor's office, and the court by the court to get a decision, but in practice the investigator can stop the legal process. The law authorizes the cessation of investigations to investigators, ie investigators are authorized to act to stop the investigations that began. This is confirmed by Article 109 paragraph (2) of the Criminal Code which authorizes investigators to stop ongoing investigations. The reasons for terminating the investigation are:

1. Insufficient evidence is obtained
2. The alleged incident is not a criminal offense
3. Termination of investigation by law.

Whereas traffic accidents that cause death victims include heavy traffic accidents in accordance with Article 229 paragraph (1) c of Law Number 22 Year 2009 concerning road traffic and transportation and do not abolish the legal process for suspects.

Vehicle drivers that cause deaths in traffic accidents have obligations such as those contained in Article 235 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation, namely: "If the victims of the world died due to traffic accidents as referred to in Article 229 paragraph (1) letter c, the driver, owner, and / or public transport company must provide assistance to the victim's beneficiary in the form of medical expenses and / or funeral fees by not aborting the criminal case claim.

Therefore, based on Law Number 22 Year 2009 concerning Road Traffic and Transportation, the police should continue the investigation even though the suspect has reconciled the families of the victims who have died. Based on the aforementioned provisions it can be seen that even though the driver has been responsible for the death of the victim, the criminal charges against him do not become lost. Therefore the police continue to carry out investigations according to the criminal procedure according to the laws and regulations (Article 230 of Law Number 20 of 2009) even though there has been peace between the driver and the victim's family as well as an agreement that the victim's family will not file criminal charges.

In addition to the implementation of Law Number 22 of 2009 concerning Road Traffic and Transportation, mediation efforts in traffic accidents which result in death can be applied in addition to implementing the Traffic Law and the Criminal Code. Legally, mediation applies in handling cases of traffic accidents so that suspects can make mediation efforts mediated by the police who handle the case with the aim of alleviating the punishment of the perpetrator and even releasing criminal entrapment from the demands of the victim or the case that befalls him.

## **B. THE ROLE AND FUNCTION OF MEDIATORS IN MEDIATION**

Mediation is a process to reconcile the parties to the dispute. Mediation is an alternative and a way to resolve a dispute where the disputing parties submit their settlement to a mediator with the intention of obtaining fair results and being accepted by the parties to the dispute.

From this understanding, it means that the parties are expected to reach an agreement that is beneficial for both parties through the negotiation path with the help of a mediator. With the agreement made by both parties it is expected to minimize wasting time in resolving disputes.

Penal mediation is an alternative form of dispute resolution (ADR). ADR is generally used in civil cases, not for criminal cases. Based on the laws that apply in Indonesia today (positive law) in principle criminal cases cannot be resolved outside the court, although in certain cases it is possible to settle criminal cases outside the court.

Although generally dispute resolution in courts is only in civil disputes, in practice criminal cases are often resolved outside the court through various discretionary law enforcement agencies or through mechanisms of deliberation / peace or forgiveness institutions that exist within the community (family deliberation, deliberation village and customary deliberations and so on). The practice of settling criminal cases outside the court so far has no formal legal basis, so there is often a case where there has been a peaceful settlement informally (even though through a customary law mechanism), but still proceed to court according to applicable law.

Muzakkir argues that from several categories as benchmarks and scope of cases resolved through reasoning mediation are as follows:

1. Violation of the criminal law is included in the category of complaint offense, both complaints that are absolute and relative in nature.
2. Such violations of criminal law have criminal penalties as a threat of criminality and violators have paid the fine (Article 80)
3. Violation of the criminal law including the category of "violation" is not a crime that is only threatened with criminal penalties
4. Violations of criminal law include criminal offenses in the field of administrative law that place criminal sanctions as ultimum remedium.
5. The violation of criminal law is categorized as mild / all-encompassing and law enforcement officers use their authority to conduct discretion
6. Violation of ordinary criminal law which is stopped or not processed in court (deponir) by the attorney general in accordance with his legal authority.
7. Violation of the criminal law is included in the category of violation of criminal law including the category of violation of customary criminal law which is resolved through traditional institutions.

Basically, a mediator acts as an intermediary that helps the parties to resolve the dispute they face. A mediator will also help the parties to frame existing issues so that they become problems that need to be addressed together. In addition, in order to produce an agreement as well as a mediator must help the parties to the dispute to formulate a variety of dispute options. Of course the dispute resolution option must be acceptable and can also satisfy both parties. At least the main role that must be carried out by mediators is to bring together these different interests in order to reach a meeting point that can be used as a starting point for solving the problem.

A mediator has the role of helping the parties in understanding each other's views and helping to locate problems that are considered important to them.

In accordance with the Supreme Court Regulation Number 1 of 2016 number 2, namely: "Mediators are judges or other parties who have mediator certificates as neutral parties who help parties in the negotiation process to find various possibilities for dispute resolution without using a way to decide or enforce a settlement".

The ability of a mediator greatly determines the success of the mediation process, especially in international disputes. Not only in the form of understanding and authority over the concepts and techniques of mediation, but also about the substance of the problem which is the object of the dispute.

Mediation can work well if the parties have an equal bargaining position and they still value good relations between them in the future. If there is a desire to resolve the problem without long and deep hostility intentions, mediation is the right choice. The advantages of mediation as an ADR movement are:

- a. Voluntary, the decision to mediate is left to the agreement of the parties so that a decision can be reached which is truly the will of the parties.
- b. Informal / flexible, unlike in the litigation process (calling witnesses, proof, replication, duplication, etc.) the mediation process is very flexible. If necessary, parties with the help of mediators can design their own mediated procedures.
- c. Interest Based. In mediation, who is right or wrong is not sought, but rather to protect the interests of each party
- d. Structure Looking, because it safeguards the interests of each party, mediation emphasizes more on maintaining the relations of the people who are in dispute in the future, not oriented to the past.
- e. Parties Oriented, with informal procedures, the interested parties can actively control the mediation process and return the settlement without too much being dependent on the lawyer
- f. Parties Control, dispute resolution through mediation is a decision of each party. The mediator cannot force to reach an agreement. Lawyers cannot stall service or take advantage of client disobedience in matters of court proceedings.

### C. APPLICATION OF MEDIATION IN THE SETTLEMENT OF CRIMINAL CASES IN INDONESIA

In Indonesian positive law criminal cases cannot be resolved outside the court process, but in certain cases it is possible to implement them. In the practice of enforcing criminal law in Indonesia, although there is no formal legal basis, criminal cases are often resolved outside the court process through discretionary law enforcement officials, customary peace mechanisms and so on. The consequence of the increasingly applied existence of reason mediation as an alternative solution to cases in the field of criminal law through restitution in criminal proceedings shows that the difference between criminal law and civil cases is not so great and the difference becomes non-functioning.

### D. APPLICATION OF PENAL MEDIATION IN HANDLING TRAFFIC ACCIDENTS THAT RESULT IN DEATH

According to Indonesian National Police Chief Regulation No. 15 of 2013 concerning Procedures for Handling Traffic Accidents Article 1 paragraph (12) Traffic Accident Investigation is a series of investigator actions in terms of and according to the method stipulated in the law to search for and collect evidence with the evidence makes clear about the traffic accident that occurred and to find the suspect.

Traffic accidents do not happen by accident, but there is a reason, because there is a cause, because accidents must be analyzed and found so that corrective actions to the cause can be carried out and with further preventive efforts an accident can be prevented. Accidents are unplanned and uncontrolled actions, when the actions and reactions of objects, materials or radiation cause injury. Accidents are events that are caused by three main factors, namely human factors, vehicle factors, and road and environmental factors. Basically, traffic accidents occur not only as a result of one of the factors above, but as a result of multi factors, namely a combination of two factors or even these three factors.

From several factors in the occurrence of traffic accidents, there are several criteria for drivers who are the cause of traffic accidents, namely:

- a. Drivers are less anticipated. Drivers who are not able to estimate the hazards that may occur due to vehicle and environmental conditions.
- b. The driver is off guard. Drivers who do other activities while driving can result in disruption of the driver's concentration, such as looking sideways, lighting a cigarette fire, taking something or chatting with passengers, and so on.
- c. The driver is sleepy. Circumstances where the driver loses reaction and concentration due to lack of rest (sleep) and or has been driving for more than 5 hours without rest.
- d. Drunk driver. The situation where the driver lost consciousness due to the influence of drugs, alcohol or narcotics
- e. Meeting distance. The situation where the driver takes the distance with the vehicle in front is less than the stop view (the distance needed to stop the vehicle is calculated starting at the sight of something, acting on the brake pedal until the vehicle stops).

The process of mediation / peace against traffic accidents which results in death victims can be carried out by the parties (parties) of suspected suspects with the families of victims outside the legal process. Completion of criminal cases through this mediation mechanism has been known since the issuance of the National Police Chief Letter No. Pol.B./3022/XII/2009/SDEOPS dated December 14, 2009 concerning handling cases through alternative dispute resolution even though they are only partial.

In this letter the Chief of Police emphasized that the settlement of criminal cases using ADR can only be implemented if there is agreement from the parties, both the victim's family and the suspect or the disputing party, but if there is no agreement, it will still be resolved by applicable legal procedures. The police are not authorized to handle peace between the alleged perpetrators and the families of the victims.

Police investigators in carrying out evidence related to the allegation that the suspect committed negligence was carried out by looking at the crime scene. Not only if the crime scene investigators also see whether the driver has used the precautionary principle or not.

Investigators in determining someone to be a suspect must be based on sufficient evidence. The evidence referred to in addition to seeing from the TIP Sketch and witness statements. Investigators also see from fulfilling the elements of the articles imposed on suspects. In handling a traffic accident case that results in the death of a person if the investigator has determined a person to be a suspect is not immediately transferred to the prosecutor's office. Investigators still provide an opportunity to do the process of resolving cases outside the court by way of deliberation in a family manner or mediation on the agreement of both parties without the knowledge of the police. Even though this deliberation for compensation must be given by the suspect party by not aborting the criminal case, but the investigator can override it with a basis for benefits.

Based on Article 227 of the LLAJ Law, if there is a mild or severe traffic accident, traffic police officers must handle traffic accidents by:

1. Sign the scene immediately
2. Helping the victim
3. Perform the first action at the crime scene
4. Process the crime scene
5. Regulates the smooth flow of traffic
6. Securing evidence and
7. Conduct case investigations

Usually in cases of traffic accidents that result in the death of the offender, the perpetrator can offer peace to the victim's family in order to relieve the criminal and be able to escape from imprisonment (Prison). If the peace offered by the perpetrators is approved, the peace carried out by the perpetrators with the families of the victims can be carried out in the meeting of the parties who litigate in an agreed place without being accompanied by the police. If the mediation efforts offered by the perpetrators have obtained the results of a peace agreement with the families of the victims, the results of the peace agreement will be poured into a letter of application addressed to the police so that the case is not proceeded in other words. mediation.

As for the actions of investigators in conducting investigations into traffic accidents which resulted in the death of the victims, including after the victims' families and the suspect made peace and gave a letter of request to the investigator so that the case was not continued. Based on a letter of request from both litigants who have agreed to peace, the police will carry out the case.

According to Article 15 of the Regulation of the Chief of the National Police Number 14 of 2012 concerning Management of Criminal Investigations (Perkapolri 14/2012) the title of case is one of a series of activities from the investigation. The stage of the investigation activities is carried out covering:

- a. Investigation
- b. SPDP delivery
- c. Forced effort
- d. Examination
- e. Case title
- f. Completion of case files
- g. Submission of case files to the public prosecutor
- h. Submission of suspects and evidence and
- i. Termination of investigation.

The actions of the police investigator who carried out the case indicated the caution of investigators in processing an indication of a criminal offense. In holding a case title there is a reference for investigators at the police level to carry out a case court mechanism as well as legal tips and legal basis with the purpose of the case title as follows:

- a. Before carrying out the title, the investigator's case must make a case title plan which includes:
  1. Number and date of police report
  2. Description of position cases
  3. Identity of the suspect and victim witness
  4. Leaders and participants in the case
  5. Investigators who explain
  6. Resume, place, date and time of implementation of the case title
- b. The case title plan is submitted to the analyst function
- c. The function of the analyst is to arrange the schedule for the case which is certainly coordinated with the investigator, especially those relating to the determination of the time and place of the case and the case title participants that must be present and may be needed by experts in certain fields related to the case
- d. After the schedule is coordinated with the investigator and agreed upon, the case title can be carried out
- e. Investigators carry out exposure to the case title
- f. The end of the implementation of the case title must produce a conclusion about the case handling process carried out and the handling process that will be carried out and how the follow-up of the case
- g. Results of case titles can be used as report material and analysis / review material
- h. The investigator makes a report on the case title and the report is submitted to the leader
- i. The analysis function analyzes, studies and examines the case position and its handling of the results of the case
- j. From the analysis of the results of the case title, the analysis function provides recommendations to the leadership which include, among others:
  1. Application of articles or laws
  2. It is correct or not the case by the investigator
  3. Relating to evidence and evidence as well as elements of the article
  4. Follow-up on handling cases.

In handling the degree, the case must go through stages including:

- a. Preparation
  1. Preparation of material for title exposure if the investigating team
  2. Preparation of facilities and marketing degree cases
  3. Shipping the title of the case
- b. Implementation
  1. Opening the case title by the case title manager

2. Exposure of the investigating team about the subject matter, implementation of the investigation, and the number of investigations that have been carried out
  3. The response of the participants to the case
  4. Discussion of issues related to case investigations
  5. Conclusion of case titles
- c. Continuation of the results of the case
1. Making report on the results of case proceedings
  2. Submission of reports to authorized officials
  3. Direction and disposition of authorized officials
  4. Follow-up on the results of the case title by the investigator and report on its progress to the supervisor of the investigator and
  5. Check the implementation of the case title results by the investigating supervisor.

In peace efforts carried out by litigants written into a peace letter and addressed to the Traffic Police with the aim that the traffic accidents resulting in death do not proceed to the investigation phase, because they have been settled in a family manner.

Efforts to title cases must present litigant parties with the aim of following up on the peace agreed upon by the parties to the dispute and submitted to the police to obtain the results of the parties' peace. In carrying out the title efforts, the victim's family and the suspect were summoned as the parties to the dispute and were attended by investigators to obtain the results of the peace from the litigants and serve as a basis for issuing orders to terminate investigations, hereinafter referred to as SPPP.

In SPPP, it was explained that the consideration was that based on the results of an investigation of suspects, witnesses and evidence, it turned out that the alleged crime was insufficient evidence or the incident was not a crime or investigation was stopped by law so that it was necessary to issue a warrant this.

In resolving traffic accident cases that result in the death of the investigator, it can go through peace with judicial and non-judicial considerations. The juridical provisions in question are using the discretionary authority based on Article 18 of the Republic of Indonesia Law Number 2 of 2002 concerning the Police and Based on the Letter of the Chief of Police No. Pol .: B/3022/XII/2009/SDEOPS, December 14, 2009 concerning Case Handling Through Alternative Dispute Resolution (ADR).

The police in conducting the mediation process by acting as a mediator to avoid riots between the victim and the perpetrator in the mediation process. so that mediated by the police, it is hoped that the mediation process can proceed safely and in an orderly manner, so that the mediator as the party that bridges the agreement between the victim and the perpetrator must be neutral, should not side with any party such as bridging compensation agreements.

Based on Article 14 letter f of the Regulation of the Chief of Police Number 7 of 2008 concerning basic strategy guidelines and implementation of community policing in the implementation of police duties which contain "the form of activities in the implementation of community policing among others the application of the concept of" Alternative Dispute Resolution " more effective in the form of neutralizing problems other than through legal or non-litigation processes, for example through peace efforts.

In conducting mediation efforts, it can be used as a method of resolving an investigation of the perpetrators of a traffic accident that results in the death of the victim because the perpetrator and the family of the victim can be brought together to discuss the desired agreement between the two parties. In the mediation process, it was carried out because of the wishes of the perpetrators and the families of the victims so that the case was completed in a win-win solution considering that formal methods would ensure that there would be losers and those who would win.

Factors that cause the settlement of traffic accidents due to:

1. Actors in terms of wanting to take responsibility directly to the families of the victims in a family manner without due process
2. The victim's family feels that the event is a disaster of the Almighty God and accepts the responsibility of the perpetrator
3. The police as investigators inform about the results of the investigation to the perpetrators and the families of the victims
4. The police as investigators inform the perpetrators and the families of the victims regarding the completion of investigations outside the court
5. The police as investigators continue to give the victim's family the opportunity to continue the legal process.

The basis of non-judicial considerations by police investigators on traffic accidents that result in death is that there has been peace between the perpetrators and the families of the victims and due to negligence caused by the victims based on the results of investigations by investigators at the scene and listening to witnesses.

## E. CONCLUSION

The implementation of mediation in an effort to resolve the act of traffic accidents which results in death can be carried out as follows as an investigation of the perpetrators and witnesses at the scene and conducting a crime scene to find out the cause of the accident which resulted in the death of the victim, the existence of a peace agreement between the perpetrator and the victim's family without the knowledge of the police, there is a statement that does not sue the victim's family for the case they experienced and does not want the case to proceed to the next stage.

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