e-ISSN: 2962-2816, p-ISSN: 2747-1985
DOI: https://doi.org/10.38035/jlph.v3i2
Received: 21 January 2022, Revised: 17 February 2023, Publish: 30 Maret 2023

JLPH
JOURNAL OF LAW POLITIC AND HUMANITIES
E-ISSN: 2962-2816, P-ISSN: 2747-1985
https://dinastires.org/JLPH
editor@dinastires.org
0811 7401 455

Application of the Law of Crashing into Deaths of UI Students is an Ordinary Offense in Relation to Restorative Justice

Tardip Panggabean
Universitas Tama Jagakarsa, email: tardippanggabcan@gmail.com

*Corresponding author: Tardip Panggabean

Abstract: The aim of research are to know stop the investigation of Ordinary Delicts/Reports at the Police at the request of the perpetrator and the victim. To know form a mechanism to stop investigations into Ordinary Offenses/Reports based on the concept of restorative justice. This research uses normative law research using normative case studies in the form of legal behavior products, for example reviewing laws. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. The finding of research are Polri investigators are aware that there is a weak point in the use of discretion to stop investigations based on the concept of restorative justice, namely the absence of written rules that serve as a legal basis for investigators. The legal basis should be constructed through several laws and regulations and the ability of Polri investigators as public officials to make decisions based on discretion. The current construction of reasoning departs from the Telegram Bareskrim Polri Number: STR/583/VIII/2012 dated 8 August 2012 and several technical instructions from internal Polri institutions.

Keywords: Law of Crashing, UI Students, Restorative Justice

INTRODUCTION

Crime is increasing in various aspects of life, even though both material and formal criminal law and the criminal justice system have been implemented in eradicating crime. With the ineffectiveness of criminal law in eradicating crime, experts in various disciplines, especially criminal law experts, have started to conduct research not on legal rules concerning crimes or those related to sentencing.[1]

Crime is a human behavior created by society. Although people have a variety of different behaviors, but have the same pattern. Symptoms of crime occur in the process of interaction between sections of society that have the authority to formulate crimes and which groups of people commit crimes. Crime (criminal acts) are not solely influenced by the size of the losses incurred or because they are immoral, but are more influenced by personal or group

[1] Abdussalam, *Criminology (Pembebasan dengan kasus tindak pidana yang terjadi di seluuruh Indonesia)*, PTIK, Jakarta, 2014, hlm. 1.

interests, so that these actions harm the interests of the wider community, both material losses and losses/dangers to soul which is human health, even though it is not regulated in criminal law[2].

Indonesia, as a developing country, in its development, especially in big cities, especially in DKI Jakarta, shows that there is an update in the field of motorization that is so fast. The rapid increase in the number of motorized vehicles is disproportionate to the expansion of roads, including the increase in facilities and infrastructure, which causes traffic problems, namely traffic jams, violations and traffic accidents.

The problem of orderly traffic is already a common phenomenon that occurs in big cities. The dense traffic around it without the support of good facilities and the lack of public awareness of traffic discipline can lead to various violations and indiscipline resulting in accidents. In a case of a traffic accident, especially a motorbike, it often does not only result in minor or serious injuries, but also causes death.

Most traffic accidents are caused by human error and negligence. Lack of awareness and lack of understanding of driving, as well as driver/rider disobedience to traffic rules are the main causes of these traffic accidents, in addition to the bad personal character of drivers/riders such as wanting to win for themselves, not caring about others so that others become difficult. therefore, apart from that, another cause is wanting to profit as much as possible even though it has to harm other people.

For example, a student at the University of Indonesia (UI), Muhammad Hasya Atallah, who was killed by a police officer, retired from the Metro Jaya Regional Police Traffic Directorate in Jagakarsa, South Jakarta, has been named a suspect. Based on the police chronology, Hasya was considered careless when driving his motorcycle. This incident sparked a polemic in the community. The author tries to give an overview of the law, namely that the panel of judges can only impose criminal sanctions or action sanctions on someone if they fulfill two (2) conditions:

1. The person is proven to have committed a prohibited act or neglected a legal obligation to act.
2. When the person commits a crime, it must be proven that there was an error in him (Shuld), meaning that the error is a condition for determining the sentence.

So to prove his guilt, a process of investigation, investigation and prosecution was carried out by the police and prosecutors. However, a crime that ensnares a perpetrator of a criminal act by itself cannot be prosecuted when the perpetrator of the crime dies. This provision is contained in article 77 of the Criminal Code (KUHP) which states, the right to demand the death penalty because the accused died," Investigators from the Traffic Directorate of Polda Metro Jaya, according to him, this case is unique and full of question marks in society, especially legal practitioners.

It is said to be unique because the victim who died was named a suspect in a traffic accident. It must be remembered that this case was a traffic accident that killed a person, not a complaint offense. However, the author is of the opinion that Article 77 of the Criminal Code "The authority to demand a penalty is removed if the accused dies". So the article cannot be applied in this accident case.

So, according to the author, Article 77 of the Criminal Code cannot be used in traffic accident cases, so the application of the law cannot be used to dismiss this case or as an excuse to stop an investigation. Because usually in traffic cases the element of negligence is often used to ensnare anyone who made a mistake causing someone's death. Namely Article 359 of the Criminal Code concerning Negligence.

[2] *Ibid*, hlm. 24.

From the processing of the crime scene (TKP) and the investigation of the case, it was found that the negligent act was alleged by the victim. This becomes strange because there are provisions in traffic where the driver must always keep his distance from other drivers, so that when the victim avoids a puddle then if the other driver behind him accelerates according to the recommendations contained in the road markings and keeps the vehicle's distance, then accidents can be avoided or if an accident occurs even though it will not result in the death of the motorbike driver who was hit because the pace of the car behind him is not fast enough.

Under such circumstances, negligence should not only be blamed on the victim, but also on the driver of the car who was the perpetrator of the crash. The driver must be accused of being negligent in driving, so he cannot control the speed of his vehicle. This is only fair. What is clear is that this case can still be continued by establishing a suspect not only for the victim, but also for the driver of the car because the victim was hit from behind. Therefore, the authors are of the opinion that the driver of the car must still be subject to suspect status. The criminal responsibility of the driver of a vehicle resulting in death in a traffic accident is regulated in Article 359 of the Criminal Code, which is a maximum imprisonment of five years or imprisonment for a maximum of one year. 22 of 2009 concerning Traffic and Roads.

Even though investigators insist that the victim who died as a suspect is an accusation that is being sought, the authors argue that the victim only avoided a puddle of water and was then hit from behind by another driver. After going through the investigation process and having conducted a case title, it was concluded that the motorbike driver who was the victim as a suspect died automatically the case had to be stopped by law.

In addition, as for the legal reasons for investigators to stop the investigation, they still cannot use Article 109 paragraph (2), that investigators can stop the investigation for various reasons, including:

- Not enough evidence.
- The alleged incident is not a crime.
- Termination of investigation for the sake of law (suspect died, expired or Nebis in idem).

Thus, Article 109 paragraph (2) point 2 of the Criminal Code cannot be used because the victim is not a suspect, he said. Then, the police are looking for other laws so that this case can be stopped or SP3. Even though the police have issued an SP3 or termination of the case, the family can submit another legal remedy by conducting a pre-trial on the determination of the suspect against the victim and the issuance of the SP3 by the investigator.

If we refer to the Criminal Procedure Code (KUHAP), article 1 point 14, it is stated that a suspect is a person who because of his actions or circumstances, based on initial evidence, should be suspected of being the perpetrator of a crime. The message is, he can be named a suspect, there must be two pieces of evidence," he said in a discussion entitled "Victims Become Suspects, What's Up with Our Police?" which was held online.

The formulation of the problem in this study when viewed from the phenomena described above are as follows:

1. How to stop the investigation of Ordinary Delicts/Reports at the Police at the request of the perpetrator and the victim?
2. How to form a mechanism to stop investigations into Ordinary Offenses/Reports based on the concept of restorative justice?

The requirements for the implementation of restorative justice are contained in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Police Regulation Number 8 of 2021 concerning Handling of Crimes based on Restorative Justice.

The legal basis for restorative justice in minor criminal cases is contained in the following regulations:

1) Article 310 of the Criminal Code (KUHP)

2) Article 205 of the Criminal Procedure Code
3) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustments to the Limits of Misdemeanor Crimes and the Amount of Fines in the Criminal Code
4) Memorandum of Understanding with Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General, Head of the National Police of the Republic of Indonesia Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 Year 2012, Number KEP -06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Implementation of Adjustments to the Limits of Misdemeanor Crimes and the Number of Fines, Procedures for Quick Examinations and Implementation of Restorative Justice
5) Letter of the General Director of the General Judiciary Agency Number 301 of 2015 concerning Settlement of Minor Crimes
6) Police Regulation Number 8 of 2021 concerning Handling of Crimes based on Restorative Justice
7) Regulation of the Attorney General Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

Criminal cases that can be resolved with restorative justice are minor criminal cases as stipulated in Articles 364, 373, 379, 384, 407 and 483 of the Criminal Code (KUHP). In this case the law given is imprisonment for a maximum of 3 months or a fine of Rp. 2.5 million.

Apart from minor criminal cases, settlement with restorative justice can also be applied to the following criminal cases:

1) Child Crime
2) Crime of women who are in conflict with the law
3) Narcotics Crime
4) Information and electronic transaction crime
5) Traffic Crime

RESEARCH METHODS

1. Types of research

This research uses normative law research using normative case studies in the form of legal behavior products, for example reviewing laws. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior.

So that normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in in concreto cases, legal systematics, level of synchronization.

2. Research Approach

In essence, the fundamental problem of this research is about the conceptual background and the implementation of government functions by the Indonesian National Police in the Integrated Criminal Justice System {SPPT} in Indonesia as the first and foremost institution in the implementation of criminal legislation. The logical consequence of this type of research is normative legal research or dogmatic law research or doctrinal research. Then as a normative legal research, the approach used to discuss research problems is through a statutory approach (Statute Approach), a conceptual approach (Analytical and Conceptual Approach), a case approach (Case Approach), a philosophical approach (Philosophy Approach) and a legal approach. comparative approach (Comparative Approach) by using deductive and/or inductive reasoning to obtain and find objective truth.

DISCUSSION

1. Termination of Investigation of Ordinary Delicts/Reports to the Police at the Request of the Perpetrators and Victims

One of the functions of law is as a means of changing society, this function implies that law creates patterns of society. These patterns must of course be able to support the creation of a condition that upholds development in various sectors. In every legal state, perpetrators of violations of the rule of law are required to be held accountable for what they have done. An act can be punished if the legal action fulfills the elements of error that have been formulated in the law. Regarding the justice system in Indonesia, it is currently considered not in accordance with the expectations of society. Keadilan tidak dapat tercapai, apabila kepastian hukum terpenuhi, karena subjek hukum tertentu dapat dihukum tanpa memperhatikan terlebih dahulu, apakah tindakan yang dianggap suatu pelanggaran atau kejahatan, yang memang merupakan suatu delik. Keterkaitan antara nilai keadilan dengan kepastian hukum sangat erat, yakni memberikan perlindungan yang bermanfaat terhadap hak-hak setiap individu, dimana hal tersebut dilaksanakan sesuai dengan prosedur yang seadil-adilnya.

As a result of the criminal justice system which tends to be offender oriented, a settlement concept outside the criminal justice system is needed. The solution offered is the settlement of criminal cases in the context of restorative justice. The concept of a restorative justice approach is a concept that focuses more on conditions for the creation of justice for perpetrators and victims.[3] The concept of restorative justice is a concept of solving problems/conflicts that occur by involving parties who have an interest in the crime that occurred (victims, perpetrators, victims' families, perpetrators' families, the community, and intermediaries).[4]

Related, Termination of the investigation into Ordinary Delicts/Reports at the Police at the request of the perpetrator and the victim. Investigators from the National Police who are authorized to carry out investigations at this time must be at least a police officer with the minimum rank of Adjunct Police Inspector Two (Aipda), while for a police officer who serves as an assistant investigator from from Police Officers with a minimum rank of Police Brigadier Two (Bripda), Police Brigadier One (Briptu), Brigadier or Brigadier Chief (Bripka).

The Criminal Procedure Code and Law Number 2 of 2002 concerning the Indonesian National Police (UU Polri) have also regulated the existence of assistant investigators to ease the burden on investigators. Assistant investigators are officials of the State Police of the Republic of Indonesia who are appointed by the head of the State Police of the Republic of Indonesia based on rank requirements who are given certain powers in carrying out investigative duties as stipulated in the law. The Criminal Procedure Code does not contain conditions for ending an investigation based on the existence of a settlement. However, the development of criminal law that is aligned with the dynamics of society has led to a legal concept that focuses on the interests of victims and society, namely restorative justice. Although in fact, according to the researcher, in the context of criminal justice there is a general legal principle that is recognized in criminal justice practice, namely the principle of simple, speedy and low-cost justice. The processing of this legal principle is highly dependent on the decisions of the Police Investigators in using the legal concept of discretion in a criminal law enforcement process in Indonesia. Therefore, in carrying out the function of the police, namely law enforcement (vide Article 2 of Law No. 2/2002), a Polri Investigator is a public authority who has the authority to make a legal discovery which is manifested in the form of a decision, namely whether to continue the investigation process or stop the investigation based on concrete facts and legal norms.

[3] Bambang Waluyo, *Viktimologi perlindungan korban dan saksi*, (Jakarta: Sinar Grafika, 2012), hlm. 58.

[4] Marlina, *Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana*, (Medan: USU Press, 2010), hlm.2

When an investigator starts an investigative action, he is burdened with the obligation to notify the public prosecutor about the commencement of said investigation. However, the problem with the notification obligation is not only at the beginning of an investigative action, but also at the termination of an investigation. For this reason, every official termination of an investigation carried out by the investigator must issue an Investigation Termination Warrant (SP 3).

It should be admitted, that in the process of examination at the investigation stage of Ordinary Delicts/Reports, a Polri Investigator is not bound by the peace that arises from the parties. Because of this, the nature of Ordinary Delicts/Reports in practice known as general offenses, which gives authority to Polri Investigators to actively carry out the investigative process. Another reason that the researcher can propose is because the nature of Ordinary Offenses/Reports is a crime that creates imbalance and discomfort and disturbs the sense of justice for the general public. This is of course different from the nature of the Complaint Offense.

A further development is the Official Note Number: B/ND-/I/I/2014/Ditreskrimum concerning Instructions for Termination of Investigation dated 8 January 2014 issued by the Dirreskrimum Polda Metro Jaya, which refers, in addition to STR No. 583/2012, also refers to Article 76 paragraph (2) Regulation of the Head of the National Police of the Republic of Indonesia Number 14 Year 12 concerning Management of Criminal Investigation [PERKAP No. 14/2012] which emphasizes that in order to terminate an investigation, a 'case title' must first be carried out. However, there was a reduction in the instructions from STR No. 583/2012 through the Official Memorandum, where in number 2.c there is a statement that the investigation has stopped being casuistic (depending on the case).

2. The Ideal Model of the Investigation Termination Mechanism for Ordinary Offenses/Reports Based on the Concept of Restorative justice

In the Criminal Justice System, Termination of Investigation as a legal concept in the Criminal Procedure Code is not found. However, as a legal concept, stopping an investigation is an authority that belongs to Polri officials who have a police function in the form of law enforcement, namely Polri Investigators (vide Article 7 paragraph (1) letter I of the Criminal Procedure Code). Thus, as an authority that is part of the authority, the Criminal Procedure Code has provided a limited scope for activities to terminate investigations. Termination of investigation as an activity, the activity in question is an assessment of a criminal case originating from a complaint or report relating to a question, namely "can a case be declared complete or not?" Thus, the appraisal process is only limited to certain conditions, as stipulated in Article 109 paragraph (2) of the Criminal Procedure Code which 269 limits the appraisal process to only 3 (three) conditions, namely (a). because there is not enough evidence; or (b). it turns out that the incident is not a criminal act; or (c). the investigation was stopped by law.

There is an understanding that Polri Investigators as a public position that has the authority to carry out assessments of concrete facts and legal norms in terms of enforcing criminal law in order to achieve peace in social life, must receive legal protection in the form of giving the authority to do so. Based on the descriptions above, the ideal model for giving authority to Polri investigators to make decisions based on discretion in the law enforcement process is as follows:

a. Classification of criminal acts that can be requested for termination of investigation are Ordinary Offenses/Reports;
b. Ordinary offenses/Reports that can be terminated if agreed by the parties are contained in a Joint Statement or Settlement Letter; notarized if necessary;
c. Ordinary offenses/Reports that cause losses without being limited in nominal value, can be stopped;

d. Ordinary offenses/Reports that result in serious injury and loss of life, cannot be stopped;
e. The settlement that had been agreed upon was later reneged on, giving authority to Polri investigators to independently cancel the decision to stop the investigation that had been issued;
f. Interested third parties must be declared as having no legal standing to submit a pretrial request, as long as there is a Joint Statement or Conciliation Letter, as far as possible notarized;
g. Conciliation, even though it has been agreed upon, Police Investigators can ignore when there are concrete facts which show that the actions of someone suspected of being the perpetrator of the crime turned out to be a repeated act;
h. In order to guarantee legal certainty, both for Police Investigators and for Victims/Reporters, the Deed of Peace must obtain a Decree from the Chairman of the District Court.

CONCLUSION AND SUGGESTION

Conclusion

a. Polri investigators are aware that there is a weak point in the use of discretion to stop investigations based on the concept of restorative justice, namely the absence of written rules that serve as a legal basis for investigators. The legal basis should be constructed through several laws and regulations and the ability of Polri investigators as public officials to make decisions based on discretion. The current construction of reasoning departs from the Telegram Bareskrim Polri Number: STR/583/VIII/2012 dated 8 August 2012 and several technical instructions from internal Polri institutions.
b. In connection with the creation of an ideal model of stopping investigations based on restorative justice in the criminal law enforcement process. The creation of this ideal model is not only to fulfill aspects of continuity and predictability, but also to take into account aspects of justice, in order to achieve peace in life in general. Thus, the concept of restorative justice can be applied to Ordinary Offenses/Reports without having to be limited by nominal value as long as they do not intersect with the appearance of serious injuries and loss of life. There is empathy from the person who gave rise to the loss suffered by the victim and there is rational control over the emotional-psychology of the victim/reporter. Where, all of these requirements are contained in the Deed of Peace and obtain the Decree of the Chairman of the District Court.

Suggestion

a. There needs to be counseling for all Law Enforcement Officials (APH) related to the concept of restorative justice, so as to create a uniform understanding and the need for the application of restorative justice which will apply to the settlement of traffic accident cases that result in victims dying. Law enforcers can be fairer in applying restorative justice to anyone who commits a traffic accident crime.
b. It is necessary for the Government and the House of Representatives to amend Article 109 paragraph (2) of the Criminal Procedure Code.

REFERENCES

Abdussalam, Criminology (Pembebasan dengan kasus tindak pidana yang terjadi di seluuruh Indonesia), PTIK, Jakarta, 2014,

Bambang Waluyo, Viktimologi perlindungan korban dan saksi, Jakarta: Sinar Grafika, 2012.

M. Karjadi dan R. Soesilo, Kitab Undang – Undang Hukum Acara Pidana Dengan Penjelasan Resmi dan Komentar, 1988.

R. Soesilo, Kitab Pidana (KUHAP), Politea, Bogor.

Soenarto Soerodobroto, Kitab Undang – Undang Hukum Pidana, Jakarta 1970.

Marlina, Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana, Medan: USU Press, 2010.

Undang-Undang no. 13 tahun 2006 Tentang Perlindungan Saksi dan Korban Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia.

Undang -Undang No.35 Tahun 1999 Tentang Ketentuan Pokok Kehakiman

Peraturan Polri Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana berdasarkan Keadilan Restoratif

Peraturan Jaksa Agung Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif