

Existence of the Policy Function in Enforcing Law of Traffic Crime on the Application of Progressive Law (Study in South Sulawesi Province)

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Abstract: The aim of this research is to gain an understanding, analyze and find out the extent of the existence of police functions in the enforcement of traffic criminal law, what factors influence the enforcement of traffic criminal law, what factors cause traffic accidents, what efforts carried out by the Indonesian National Police in enhancing professionalism in the enforcement of traffic criminal law and the extent of the enforcement of traffic criminal law against the application of progressive law in the Province of South Sulawesi. This type of research is sociological research, namely research that is directed at examining symptoms, factors or events systematically and accurately, regarding the nature or specific area that uses primary and secondary data. Based on the results of the study, it can be concluded that (1) the existence of Polri's functions in traffic criminal law enforcement is not optimal, (2) factors that influence traffic law enforcement, namely legal substance, legal structure, facilities or facilities, public awareness of the law, culture, and political factors, (3) factors causing traffic accidents, namely human factors, vehicles, roads, weather, animal and animal factors, (4) Polri's efforts to improve the professionalism of law enforcement, namely developing education in both police and general education. (5) Enforcement of traffic criminal law against the application of progressive law, namely by alternative dispute, resolution (ADR), diversion.

Keywords: Police, Law Enforcement, Traffic, Progressive

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I. INTRODUCTION

Road transport has a strategic role in supporting national development and integration as part of efforts to display public welfare as mandated by the 1945 Constitution of the Republic of Indonesia as part of the transportation system national, road traffic and transportation must be developed potentially and its role to realize smoothness, prosperity, traffic order and road transport in order to support economic development and the development of science and technology, regional autonomy and accountability of state administrators.

In Law Number 22 the Year 2009 in addition to creating traffic and road transport that is safe, secure, orderly, smooth and easily integrated with other transportation, it also has other objectives to encourage the national economy, realize people's welfare, national unity and ability uphold the dignity of the nation. Security aspects also receive attention placed in regulating road traffic and transportation. In addition, in Article 200 paragraph (3) of Law No. 22 of 2009, ethics of traffic and national culture (also put in place *Just Culture*) through efforts to guide, provide guidance and education on traffic from an early age and carry out through continuous programs.

In order to anticipate a global strategic environment that requires the nation's resilience to compose in global competition and to meet the demands of a new paradigm that craves better, transparent and accountable government services, various visionary breakthroughs are formulated to overcome very complex problems. In Article 13 paragraph (2) of Law Number 22 the Year 2009 mandates the enactment of traffic forums and road transport. The traffic forum is anybody *ad hoc* that functions as a vehicle for organizing the main tasks and functions of each agency carrying out traffic and road transport in order to analyze problems, bridge, determine solutions and improve service quality. To reduce the number of violations and traffic accidents that are felt to be very high, future efforts will be directed at comprehensive countermeasures which include efforts to guide, prevent, regulate and enforce the law (Listiyanto, 2013).

The police are one of the government institutions that play an important role in the country, especially for countries that are based on the law, besides the necessary legislation is also very necessary for professional law enforcement officers. As a state tool for law enforcement of the Republic of Indonesia National Police in

carrying out its duties and authority, it always uses the law as its main instrument (Djanggih& Ahmad, 2017). This means that the police must always be based on a law that is oriented to justice, truth, both pre-emptive, preventive and repressive.

In this regard, the National Police has formulated Polri's bureaucratic reforms which were carried out in stages and planned. Since December 2008. Until now the National Police bureaucratic reform continues. This is a manifestation of the seriousness of the National Police to make changes as an effort to improve the quality of performance in carrying out the main tasks of the National Police.

The concept of reforming the National Police is how to apply the principles of transparency and accountability that are part of the *good government*. Based on this, Polri's bureaucratic reform has set the main agenda, namely the evaluation of Polri's performance.

Restructuring the National Police organization aims to build an effective, efficient, accountable and transparent Polri organization in accordance with the dynamics of changes in the strategic environment and the challenges of the tasks at hand.

Referring to these demands and expectations, it is necessary to have the spirit to revitalize the National Police to answer the development of the strategic environment and the complexity of the challenges of the tasks of the National Police. Revitalization in the body of the National Police as a step to revive building and empowering the values of capabilities that have been possessed by the Indonesian National Police in all fields which so far have not been able to be maximally realized to face the challenges of the Polri's duties.

The paradigm of the revitalization process is the attitude that serves, pro-active, transparent and accountable, where the paradigm can encourage the realization of excellent service which in turn can increase public trust and on the other hand can strengthen the internal solidity of the Police.

To realize the revitalization of the National Police, what must be done is to include the institutions of creative breakthrough programs significantly so that the benefits and benefits of the community and can be seen in a tangible manner *stakeholders* other. The realization of revitalization is a unit that is able to revitalize the role of the National Police to make the National Police more serviceable, pro-active, transparent and accountable, so as to increase public trust and internal solidity. One of the ways to increase public trust in the National Police is to improve the performance of traffic police as the frontline of community service as well as law enforcement.

In South Sulawesi Province the rapid growth of vehicle ownership in the past year has caused considerable pressure on the road network and traffic control devices.

Various problems in the field of road traffic that arise from time to time, along with the rapid growth of traffic in people's lives. One of the many problems that occur today is the frequent occurrence of violations and traffic accidents based on data from the Directorate of traffic police in South Sulawesi on traffic and traffic accidents in the last five years as follows: cases of traffic violations in 2013 were 72,015 cases, in 2014 76,037 cases, in 2015 there were 89,446 cases, in 2016 there were 93,949 cases, and in 2017 there were 108,101 cases. While the cases of traffic accidents in the last five years are: in 2013 there were 4,563 cases in 2014 with 4,434 cases, in 2015 there were 4,834 cases, in 2016 there were 6,375 cases, and in 2017 as many as 6,434 cases. In the area of traffic accident research in the last five years, namely: Makassar Polrestabas as many as 5,329 cases, Maros Regional Police as many as 1,652 cases, Gowa District Police with 1,646 cases, Pangkep Regional Police with 837 cases, and Pare-pare Regional Police with 785 cases. This happens as a result of the still lack of functioning of the Traffic Police in carrying out control, especially in enforcing traffic law.

Regarding the need for law enforcement, the traffic police as law enforcement officers and together with related components to maintain and create legal order in the field of traffic, as well as anticipate all impacts arising from these conditions, so that they are constantly adjusting to the situation.

II. RESEARCH METHODS THIS

Type of research is socio-legal research, namely research directed at examining symptoms, factors or events systematically and accurately, regarding nature or specific area that uses primary and secondary data. The technique used to obtain primary data is by visiting respondents directly by using observation techniques and interviews and distributing questionnaires. Whereas secondary data collection is a technique of tracking statutory literature, books, journals, scientific works, official government documents that are relevant to research. Furthermore, it is analyzed qualitatively and quantitatively.

III. DISCUSSION

Application of Progressive Law in Traffic Law Enforcement.

In the tradition of legal-positivist thinking, which is widely adopted in today's democratic countries, the law is conceived as a product of legislation. Law is a law that is produced through a national legislative process. The law applies solely because it has been established in the form of legislation, regardless of whether the content is fair or unfair. In this system, legal actors (bureaucracy and judges) in accordance with the doctrine of

analytical jurisprudence only serve as a legal funnel. Law should be in the service of humans, not the other way around (Rajardjo, 2007).

In the concept of progressive law, the law does not serve itself, but for the purpose that is outside of itself (Rajardjo, 2007). This is different from the tradition of *analytical jurisprudence* which tends to dismiss the outside world like humans, society and welfare (Rahardjo, 2007).

Progressive law which requires liberation from the tradition of retention has similarities to Roscoe Pound's thinking about law as a tool of *social engineering*. Efforts are *Social engineering* considered as an obligation to find the best ways to advance or direct the community (Rahardjo, 2983).

Progressive law prioritizes goals and contexts in the text of the rules, so discretion has an important place in the administration of law. Thomas Aaron formulated discretion as *power authority conferred by law on the action on a basic judgment or constant law* (Aaraon, 1960). In the context of discretion, law administrators are required to choose wisely how they should act. The authority they have based on official rules is used as the basis for taking a wise way of approaching the reality of their duties based on a moral approach rather than formal provisions.

Discretion is done because perceived legal means are less effective and limited to their nature in achieving legal and social goals (Faal, 1991). Discretion is done to achieve goals such as justice, certainty, harmony, for example, it is too general so that the implementers have the opportunity to develop interpretations of the test (Rahardjo, 1983).

The development of systems and methods Law enforcement in Indonesia shows a tendency to follow the development of community justice, especially the development of the principle of *restorative justice* that reflects justice as a form of balance of human life so that deviant behaviour from Genelia criminals is a behaviour that removes balance (Djanggih, Hipan&Hambali, 2018). Thus the case settlement model is an attempt to reverse the balance. By burdening its obligation to the perpetrators of crime with the awareness of admitting mistakes, apologizing and reversing the damage and losses of victims as before or at least resembling the original conditions that can fulfil the victims' sense of justice.

The development of the concept of law enforcement in the system of Law enforcement in various countries adopts the principle of Restorative justice (*restorative justice*) and with the emergence of various problems in the law enforcement process in Indonesia such as *over capacitation*, increasing arrears, the number of law enforcers that are not balanced with the development of cases, enrichment fees that are unable to support the improvement of cases and their implementation, have an impact on changes in the legal culture of the community, especially the way the community views the law enforcement process.

In order to answer the development of the legal needs of the community and fulfill the justice of all parties, the Indonesian National Police as an institution given the authority as an investigator and investigator and coordinator and supervisor of criminal investigations, feels the need to form new concepts in the criminal justice system, especially in the investigation process and criminal investigations that are able to accommodate the values of justice in the community while providing legal certainty, especially the certainty of the process.

The application of the principle of Restorative *justice* in the concept of investigation and investigation in order to realize the public interest and sense of justice of the people who do not have a legal basis and can be used as a guideline for implementation and in realizing a variety of understanding and application of *restorative justice* in the Republic of Indonesia National Police Indonesia requires legal products as a guideline for police investigators and investigators who carry out, including legal protection arrangements and control supervision.

The principle of *restorative justice* can not be interpreted as a method of peaceful termination of cases, but more broadly to fulfill the sense of justice of all parties involved in criminal cases through efforts involving victims, perpetrators and the local community as well as investigators / investigators as mediators, while settling the case of one of them in the form of a peace agreement and revocation of the right to sue the victim need to be asked for the determination of a judge through the public prosecutor to abort the authority to sue the victim, and prosecute through the public court (Mahdi, 2013).

In the application of Restorative *justice* to traffic accidents, it can be seen in the traffic accident unit of Makassar Polrestebes, Gowa Regional Police, Maros Regional Police, Pangkep Regional Police and Pare-pare Regional Police, which are the research locations. Subsequently followed up by the investigating apparatus. The form of action taken by investigators can be seen in the following table:

Table 25: Settlement of Traffic Accident Criminal Report 2013-2017

No	Jenis	Polrestebes Makassar	Polres Gowa	olres Maros	Polres Pangkep	Polres Parepare	Jumlah	%
1.	LIDIK	139	09	8	124	166	1206	12.15
2.	SIDIK	15			445	24	828	8.44

			36	18				
3.	P21	139	3	20	57	38	437	4.40
4.	SP3	196	1	6	63	56	432	4.35
5.	ADR	4937	84	39	127	434	6.921	69.74
	DIVERS I	31	6	8	21	4	90	0.90
Jumlah		5.457	273	619	837	722	9.924	100

Sumber : Unit Laka Polrestabes Makassar, Polres Gowa, Polres Maros, Polres Pangkep dan Polres Parepare, Tahun 2018

Completion in reports of traffic accidents at the research sites includes: investigation, investigation, P21, SP3, *alternative dispute resolution* (ADR) and transfer of settlement of child cases from criminal justice processes to processes outside of criminal justice (*Diversion*). Data on 5 (five) locations of the study showed that the revocation of the report was the most taken by the victims through *alternative dispute resolution* (ADR), which was 6,921 cases or 69.74%.

Based on table 24 above, the completion of the traffic accident report at the location of the study included: 1206 cases of accidents or 8.44%, 836 cases of investigations or 8.44%, 437 cases in P21 or 432 in SP3. or 4.35%, the completion of Alternative Dispute Resolution (ADR) as many as 6921 cases or 69.74% and Diversion settlement as many as 90 cases or 0.90%.

From the percentage above, it can be concluded that the settlement of a traffic accident crime *Alternative Dispute Resolution* (ADR) is apparently preferred by parties rather than through litigation.

Below will be described the resolution of traffic accident cases in the research area as follows:

1. Makassar Regiolan Police

Completion of accident cases reported at the traffic accident unit Makassar Polrestabes shows that the number of victims who revoked the report were: 4937 cases. Revocation of reports carried out by victims in general after being explained by the investigator about the legal process to be faced if the case continues. The case for which the report was revoked was a case of a traffic accident with a mild category, namely article 22 paragraph (2) of Law No. 22 of 2009 concerning Road Traffic and Transportation.

The high number of traffic accidents at the Makassar Polrestabes is caused by various things, namely human factors, road factors, vehicle factors and natural factors. Traffic accidents in Polrestabes Makassar from 2013 to 2017 have increased to 80%. One of the factors is Polrestabes Makassar is the most populous city in South Sulawesi Province, both its residents and vehicles. Where road facilities and infrastructure are not in accordance with the development of the number of vehicles. The highest causes of traffic accidents that occur in Makassar City are caused by *human error* up to 66%¹. In addition to human error, road factors that are sometimes not equipped with road infrastructure, for example, traffic lights (*traffic light*) do not function properly so that it can cause traffic accidents.

2. Gowa Regional Police

Completion of traffic accident cases reported at the Gowa Police traffic accident unit shows that the number of victims who revoked their reports was 784 cases. The process of resolving traffic accidents in the traffic accident unit of the Gowa police station is always preceded by peace efforts mediated by investigators. Peace efforts are taken in maintaining the integrity of the community and safeguarding their respective interests. The peace effort was carried out in a special service room for the accident unit of the Gowa police station.

The development of traffic accident cases from 2013 to 2017 in the legal area of Gowa Regional Police increased by 50%. The form of settlement of traffic accidents is divided into 4 (four) parts, namely handling material accidents, minor accidents, serious accidents and prominent accidents. This stage of completion through *alternative dispute resolution* (ADR) is the desire of the victims because there is no harm to the parties².

3. Maros Regional Police

Completion of traffic accidents reported in the Maros police traffic accident unit reported as many as 1619 cases. The low number of cases processed at the Maros Regional Police does not mean the level of traffic

¹Interview with KasatlantasPolrestabes Makassar Probluddin on July 5, 2018

²Interview with Gowa District Police Headquarters ReligiaParadigta on July 9, 2018

accidents at the Maros Low Police Station. In fact, traffic accidents in the Maros police jurisdiction are high. But before a police report is made, the investigator usually advises and gives time to the victim to think about deliberation in order to find a way of peace.

After the parties did not find a way of peace, the investigators made a police report. Police reports made by investigators to maintain the spirit of certainty, justice and expediency.

The development of accident cases in the legal area of the Maros Regional Police increased from year to year. Existing data from 2013 to 2017 increased to 68%. There were also traffic accidents that occurred at the Maros Regional Police in general by underage children³.

4. Pangkep Regional Police

The number of traffic accidents reported at the Pangkep Regional Police traffic accident unit was 837 cases. The revocation of reports carried out by victims is largely due to the investigator's efforts to provide an overview of the disadvantages if the case is resolved through litigation. The investigator's efforts to reconcile the victim involved the parties, especially local community leaders, and who were not less important, namely involving the family, because the family had a very important role in the peace effort, the family was hoping that the traffic accident cases would be settled in a family manner.

The development of traffic accident cases from 2013 to 2017 experienced a 57% increase. The factors that cause the highest traffic accidents are human factors where the driver is in a state of being careless, sleepy, tired and playing excessive music (Sadono, 2016). While the second factor is the factor of the vehicle such as tire breaks, slips, the brakes do not work and the main lights do not violate at night. The third sequence is the load factor. It turns out that it is not a hollow road or a damaged road that causes a traffic accident but a good and straight road can also cause traffic accidents, this is generally the driver being complacent about the good and straight road, but they are not aware that the driver is well and straight others who cut the road or turn suddenly even stop suddenly⁴.

5. Pare-pare Regional Police

Settlement of traffic accident cases in the Laka unit is largely the investigator's attempt to reconcile the two parties. In fact, many cases of accidents occur in the community reported in the Prepare police traffic accident unit. Of the 722 reported cases of accidents, 434 successful cases passed the *Alternative Dispute Resolution* (ADR) and through *Diversion* as many as 4 cases and 284 cases through litigation, while those under investigation were 166 cases of escape.

The development of traffic accident cases from 2013 to 2017 increased 91%. Factors causing traffic accidents is the highest in the human factor(*human*⁵error).

In general, the actions of investigators at the traffic accident unit of Makassar Polrestabes, Gowa Regional Police, Maros Regional Police, Pangkep Regional Police and Pare-pare Regional Police can be concluded that from accident cases reported in traffic accident units, most cases were revoked by the reporter. The reasons for revoking the report are as follows:

- a. Through the process of *Alternative Dispute Resolution* (ADR) quickly and together no one feels defeated and won.
- b. Through the non-litigation process, both parties continue to establish kinship in harmony.
- c. The victim realizes that accidents are not an intentional element and no one wants an accident

if we refer to Law No. 1 of 1946 concerning the Criminal Code (KUHP) no criminal offence is carried out outside the court (*non-litigation*). However, the resolution of traffic cases by the police, in this case the investigator at the traffic accident unit does not fully comply with the provisions of the criminal law that apply to the settlement of traffic accidents, so that most cases of traffic accidents are resolved by prioritizing deliberation and family values and consideration of justice and benefit based on the Police Circular Number: SE / 08 / VII / 2018 concerning the Implementation of *Restorative Justice* in the Settlement of Criminal Cases. The purpose of the police chief's circular letter is to promote deliberation and family values in the process of resolving traffic accident cases which are a form of progressive law enforcement by investigators. The investigators consider that the problem of traffic accidents is the problem of cases of criminal acts of negligence (*culpa*). This is an effort and moral (*moral justice*) from the investigator.

Peace efforts pursued by investigators are also through *legal justice*. That traffic accident that can be reconciled are sought to reconcile the parties.

Peace efforts in the law enforcement process will lead to reduced cases in the judiciary. The reason for the method of resolving criminal cases is through peace efforts to reduce the capacity of the number of assisted

³ Interview with the GowaSuyitno Regional Police Headquarters Opinion on 25 July 2018

⁴Interview with Korbin Ops Then PangkepGunawan Regional Police on August 6, 2018

⁵Visible Interview with Police Pare-pare Budi Susilo on August 21, 2018

citizens and the incomparable number of investigators with the number of traffic accidents. References that can be used as the basis for the application of the principle of *restorative justice* to traffic accident accidents are as follows.

- 1) Article 26 paragraph (1) of the Criminal Code that except in the event that the judge's decision is still possible to be repeated, the person may not be prosecuted twice because of an act that the Indonesian judge against him has been tried with a fixed decision.
- 2) Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Justice System at the level of investigation, prosecution and examination in the district court must be sought for Diversion.
- 3) Article & paragraph (1) letter S of Law No.8 of 1981 concerning Criminal Procedure Law (KUHAP) that investigators because of their obligations have the authority to take other actions according to responsible law.
- 4) Article 16 paragraph (1) letter L and article 18 of Law No. 2 of 2002 concerning the Police of the Republic of Indonesia and article 5 paragraph (1) number 4 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) that other actions as referred to in article 16 paragraph (1) letter L are acts of investigation and investigation that implemented if it meets the following requirements:
 - a. Not contrary to a rule of law.
 - b. In line with legal obligations that require these actions to be carried out.
 - c. Must be obedient, reasonable, dam included in his position.
 - d. Worthy consideration based on compelling conditions.
 - e. Respect for human rights.
- 5) Article 18 of the Republic of Indonesia Law No. 2 of 2002 concerning the Indonesian Police, that in the public interest of the Republic of Indonesia National Police officials in carrying out their duties and authorities they can act according to their own judgment, this can only be done in very necessary conditions by taking into account the laws and regulations and the Indonesian National Police Professional Code of Ethics.

Article 22 paragraph (2) letters band c of the Republic of Indonesia Law Number 30 of 2014 concerning Government Administration stated that every use of discretion by government officials aims to fill the legal vacuum and provide legal certainty.

IV. CONCLUSION

Based on the problems from the description of the research results, it can be concluded that the existence of the functions of the Indonesian National Police in law enforcement in the traffic sector in South Sulawesi Province is less effective and efficient so that it has not met the expectations of the community. Efforts to improve professional police members in the field of traffic, namely: a) Increasing human resources and b) Improving welfare. The application of progressive law to law enforcement in the field of traffic is by way of *Alternative Dispute Resolution* (ADR) and Diversion (Suhariyanto, 2015).

BIBLIOGRAPHY

- [1]. SatjiptoRahardjo, Concept and Progressive Legal Parameters "Paper on Progressive Law National Seminar"Collaboration between the Faculty of Law, UNDIP, Doctoral Program in Law, UNDIP and Faculty of Law, Trisakti University, Semarang, December 2007.
- [2]. Djanggih, H., & Ahmad, K. (2017). The Effectiveness of the Indonesian National Police Function on Proud Regency Police Investigation (Investigation Case Study Year 2008-2016).*Journal of Legal Dynamics*,17(2), 152-157.
- [3]. Djanggih, H., Hipan, N., &Hambali, AR (2018). Re-Evaluating The Law Enforcement To Money Political Crime In Pemilukada In BanggaiRegency.*Arena Law*,11(2), 209-225.
- [4]. Listiyanto, A. (2013). Ambiguity in the Application of Restorative Justice Against Cases of Traffic Accidents That Cause Life Victims.*RechtsVinding Journal: National Law Development Media*,2(2), 197-213.
- [5]. Al Mahdi, M., & Din, SB (2013). Peace in Traffic Accident Crimes.*Journal of Law*,1(4).
- [6]. Sadono, S. (2016). Culture of Cross-Ordering "Phenomenological Study of the Society of Motorcycle Riders in the City of Bandung".*CHANNEL Journal of Communication*,4(1).
- [7]. Suhariyanto, B. (2015). Application of Diversion to Deal with Problems in Settling Cases of Violations in Court Traffic.*Journal of Law and Justice*,4(1), 153-170.
- [8]. SatjiptoRahardjo, 1983, *Law and Social Renewal: An Overview of Politics and Experiences in Indonesia*Indonesia,, Bandung, Page 16
- [9]. Thomas Aaraon, 1960, *The Control of Police Discretion*, Springfield, Charles D. Thomas.
- [10]. M. Fal, 1991, *Screening of Criminal Cases by Police (Police Discretion)*, PradnyaParamita, Jakarta.
- [11]. SatjiptoRahardjo, 1983, *Law Enforcement Issues*, SinarBaru, Bandung