

The Implementation Of Prosecution Termination Based On Restorative Justice In Traffic Accident Cases Resulting In Death Due To Negligence At The Asahan District Prosecutor's Office

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ABSTRACT

Traffic accidents resulting in fatalities due to driver negligence are one of the crimes that often occur in Indonesia, including in Asahan Regency. In many cases, this incident was not done intentionally, but purely due to unplanned negligence (culpa). This type of research uses an empirical legal research method, this research combines a normative approach (statutory regulations and legal doctrine) and an empirical approach (observation of practices in the field), especially at the Asahan District Attorney's Office. Termination of prosecution based on restorative justice is regulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This approach emphasizes the restoration of the original state and the restoration of relations between the perpetrator, victim, and community, rather than on retaliation through punishment. The application of termination of prosecution based on Restorative Justice to traffic accident cases due to negligence resulting in death at the Asahan District Attorney's Office in the application of restorative justice at the Asahan District Attorney's Office has been carried out in accordance with applicable regulations. In cases of traffic accidents due to negligence resulting in death, termination of prosecution can be carried out if the victim or his/her family has forgiven the perpetrator and a peaceful agreement is reached without any coercion or pressure and intimidation. The Public Prosecutor has an important role in facilitating this process and the Public Prosecutor as a facilitator ensures that formal and substantive requirements are met.

Keywords: Criminal, Accident, Death and Prosecutor's Office Asahan.

INTRODUCTION

The implementation of Restorative Justice (RJ) in the Indonesian legal system has received increasing attention in recent years, especially in resolving criminal cases with an approach that prioritizes the restoration of relations between victims and perpetrators. One application of the RJ principle is in cases of traffic accidents resulting in death or injury to others. The Asahan District Attorney's Office as part of the criminal justice system plays a role in enforcing the law and assessing whether RJ can be applied in the case. Traffic is the movement of vehicles and people in the road traffic space. By observing this definition, there are three components that are part of traffic, namely vehicles, people and road traffic space.

Vehicles are a means of transportation on the road consisting of motorized and non-motorized vehicles, where motorized vehicles are driven by mechanical equipment in the form of engines and non-motorized vehicles are driven by human and/or animal power. Restorative Justice (RJ) is an approach in the criminal justice system that aims to restore losses or damage caused by criminal acts by involving the parties directly involved, namely the perpetrator, victim, and community. This approach focuses on healing or restoring relations between the parties involved, and seeks to prevent similar criminal acts in the future. The criminal justice system in

Indonesia is closely related to the criminal law rules inherited from the Dutch colonial era, namely the *Wetboek van Strafrecht* or the Criminal Code (KUHP).

The criminal punishment system in the Criminal Code adopts a retributive paradigm, namely giving retribution to perpetrators of criminal acts. This retributive paradigm can be seen from the types of punishment in Article 10 of the Criminal Code which only focuses on appropriate action or retribution for perpetrators of criminal acts. Indonesian society itself has been familiar with the concept of Restorative Justice in customs, customary law and the values born therein. Before being proclaimed in a special regulation in Indonesia, this country which is famous for its Pancasila also actually had the concept of Restorative Justice. In the retributive paradigm, the state through law enforcement officers represents victims of criminal acts to avenge the suffering they have experienced by punishing perpetrators of criminal acts through the court process. The purpose of this retributive paradigm is so that perpetrators of criminal acts become deterred and do not repeat their actions, so that all aspects of criminal punishment only pay attention to the perpetrators of criminal acts. This results in the interests of victims of criminal acts as parties who suffer because of the occurrence of criminal acts being marginalized.

Although the perpetrator of the crime has been sentenced, the suffering experienced by the victim of the crime has not been able to be restored, so that in its development the paradigm of restorative justice emerged to resolve criminal cases. Restorative justice has many definitions from experts, one of which is widely agreed upon is the definition of Tony Marshall which states "Restorative justice is a process in which the parties concerned in a particular violation collectively resolve how to deal with the consequences of the violation and its implications in the future". Restorative justice aims to restore the parties concerned as a result of the crime, namely the victim, the perpetrator of the crime, and the community.

Traffic accidents resulting in fatalities due to driver negligence are one of the crimes that often occur in Indonesia, including in Asahan Regency. In many cases, this incident was not carried out intentionally, but rather was purely due to unplanned negligence (*culpa*). However, the perpetrators are still processed criminally in accordance with Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation. However, the retributive criminal law approach often does not completely resolve the problem, especially in cases of accidents that are regretted by the perpetrator and can be resolved peacefully with the victim's family. For this reason, the Attorney General's Office of the Republic of Indonesia issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which provides space for termination of prosecution based on restorative justice (*Restorative Justice*). The application of this approach in Asahan District Attorney's Office becomes interesting to study because it touches on aspects of substantive justice, social restoration, and the effectiveness of law enforcement. Therefore, this study is important to find out how the RJ process is applied in practice, what are the obstacles and successes, and how much influence it has on the resolution of unintentional criminal cases.

LITERATURE REVIEW

This study explains that traffic accidents are often caused by human negligence and are often resolved through peace mechanisms from the investigation stage, although it does not rule out the possibility of continuing to the court process. This mechanism is the basis for thinking

about the approach Restorative Justice(RJ) in the context of accident cases. Restorative Justice in traffic accident cases provides a more humane and solution-oriented alternative solution, especially if there is peace between the victim and the perpetrator. The element of negligence in an accident is important to examine the extent to which negligence in criminal law can be excluded from the prosecution process if the perpetrator shows good faith and there is reconciliation with the victim's family. The policy of the District Attorney's Office in a local context such as the Asahan District Attorney's Office, needs to be examined on how the RJ practice is implemented technically and legally, as well as its challenges.

METHODS

Implementation *Restorative Justice* in cases of traffic accidents due to negligence resulting in death has a strategic value in reducing the burden of cases in court, increasing a sense of restorative justice for victims, resolving conflicts peacefully and efficiently, providing space for reflection and improvement for perpetrators, integrating legal and humanitarian approaches in a balanced manner. This type of research is empirical juridical, this research combines a normative approach (legislation and legal doctrine) and an empirical approach (observation of practices in the field), especially at the Asahan District Attorney's Office. The approach is a legislative approach to analyze the legal basis for terminating prosecution based on restorative justice, taking a case approach (Case Approach) to study traffic accident cases with fatal victims whose prosecution was terminated. Document studies in the form of regulations (Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice), circulars (Circular of the Deputy Attorney General for General Crimes Number: 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice) and conducting interviews with Public Prosecutors (JPU) who in this case act as facilitators in the implementation of RJ. Data is analyzed qualitatively, by interpreting field data and comparing it with applicable legal norms.

RESULTS AND DISCUSSION

Result Study Restorative.

This study shows that the Asahan District Attorney's Office has implemented Restorative Justice (RJ) in resolving traffic accident cases due to negligence resulting in death, based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The application of RJ is carried out at the pre-prosecution stage, before the case goes to court. In its implementation, the Prosecutor conducts penal mediation between the Suspect and the victim's family. If a peace agreement is reached and a form of responsibility has been given such as compensation, an apology, and the victim's willingness to forgive, then the case is terminated through the issuance of a Letter of Termination of Prosecution (SKP2).

Several things that support the success of the implementation Restorative Justice at the Asahan District Attorney's Office is the good faith of the perpetrator to take moral and material responsibility, the openness of the victim's family in resolving the case peacefully, the support of community leaders and religious leaders, who assist the peace process, and the active role of the prosecutor as a neutral and professional peace facilitator.

However, in the implementation Restorative Justice also encountered obstacles:

1. Not all families of victims accept requests for peace, especially when the accident causes serious injury or death to more than one person.
2. Lack of public understanding regarding the purpose Restorative Justice, who still think that a peaceful settlement means "the perpetrators go free."
3. There are no arrangements yet Restorative Justice in the Criminal Procedure Code, so that its implementation is still limited to the internal regulations of the Prosecutor's Office.
4. There is still doubt within the Prosecutor's Office about using RJ in cases resulting in death because it is feared that it will invite negative public judgment.

Based on interviews and document studies at the Asahan District Attorney's Office, the implementation of termination of prosecution based on restorative justice is carried out in accordance with the Regulation of the Indonesian Attorney General Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The process involves several stages, including:

1. Identification of case eligibility

The prosecutor examines whether the crime meets the criteria that are in accordance with the requirements for termination of prosecution based on restorative justice in accordance with Article 5 of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice with the main requirement that the criminal case can be closed by law and its prosecution can be terminated based on Restorative Justice if the following requirements are met:

- a. The suspect committed a crime for the first time;
- b. Criminal acts are only punishable by a fine or are punishable by imprisonment for no more than 5 (five) years; and
- c. The crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000,- (two million five hundred thousand rupiah)
- d. There has been a restoration to the original condition carried out by the Suspect in the following manner:
 - 1) return items obtained from criminal acts to the victim;
 - 2) compensate the victim for losses;
 - 3) replace costs incurred as a result of criminal acts; and/or
 - 4) repairing damage caused by criminal acts;
- e. There has been a peace agreement between the Victim and the Suspect; and
- f. The community responded positively.

Termination of Prosecution based on Restorative Justice is excluded for cases:

- a. Criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their representatives, public order and morality;
- b. Criminal acts that are threatened with a minimum penalty;
- c. Narcotics crimes;
- d. Environmental crimes; and
- e. Criminal acts committed by corporations.

2. Facilitation of penal mediation

The Public Prosecutor or in this case as a facilitator brings together the perpetrator with the

victim and the victim's family and is also attended by community leaders and related parties to achieve peace. This meeting is held at the Prosecutor's Office except If there are conditions or circumstances that do not allow for reasons of security, health or geographical conditions, the peace process can be carried out at a government office or other location agreed upon with a letter of instruction from the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office.

3. Preparation of peace minutes

If both parties agree to make peace, then a report is drawn up which is signed jointly by the perpetrator, the victim and the victim's family, witnessed by community leaders and related parties.

4. Publishing

After a case is approved, the prosecution is terminated based on Restorative Justice by the Deputy Attorney General for General Crimes, then The Head of the District Attorney's Office issues a Letter of Decision to Terminate Prosecution (SKP2) as an official document that the prosecution has been terminated.

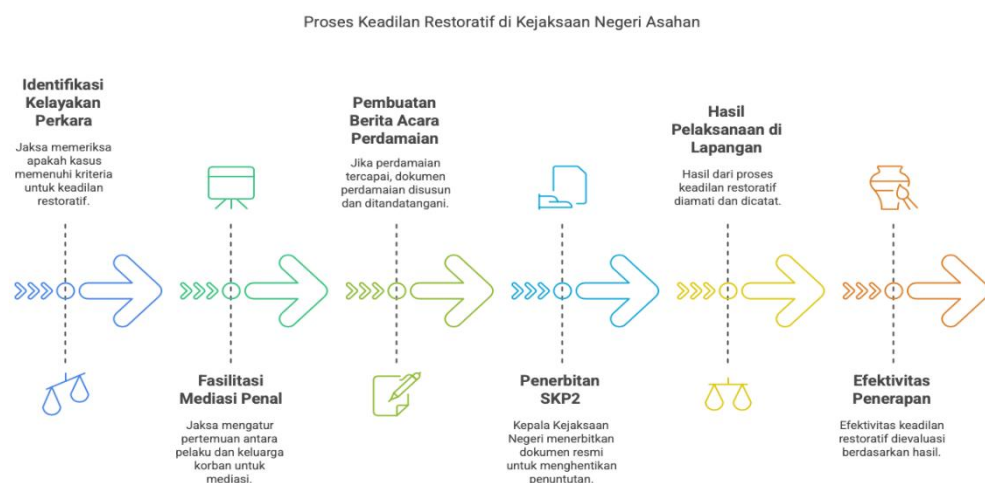


Figure 1. Letter f Decision To Stop Prosecution

Legal Arrangements for Termination of Prosecution Based on Restorative Justice.

Restorative Justice is an approach to resolving criminal cases that focuses on restoring the victim's losses, the perpetrator's moral responsibility, and restoring social relations that have been disrupted by the crime. This concept is different from the traditional criminal justice system which is retributive (punishing). Restorative Justice is based on principles including justice that is oriented towards the victim and the perpetrator, not just the state, resolution through deliberation and peace and restoration of losses and social relations, not retaliation. Indonesia in general is a form of approach to resolving criminal cases that focuses on restoring the original state (restoration) and improving relations between the perpetrator, victim, and society that is not merely punishment of the perpetrator. Restorative Justice in Indonesia has a strong legal basis, especially through Attorney General Regulation No. 15 of 2020 on Termination of Prosecution

Based on Restorative Justice and implemented operationally in the Prosecutor's Office. The goal is to resolve cases peacefully, fairly, and oriented towards recovery, not just criminalization. Legal Basis of Restorative Justice in Indonesia has adopted restorative justice in various regulations:

- a. Republic of Indonesia Attorney General's Regulation No. 15 of 2020 is the main rule governing the termination of prosecution based on restorative justice. This regulation allows the termination of a criminal case if certain conditions are met.
- b. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Regulating diversion mechanisms, namely a form of restorative justice for children in conflict with the law.
- c. Supreme Court Circular (SEMA) No. 4 of 2014 Encourage the application of restorative justice in minor cases that do not cause public unrest.

Application of Termination of Prosecution Based on Restorative Justice in Traffic Accident Cases Due to Negligence Resulting in the Death of Another Person at the Asahan District Attorney's Office

The process of terminating prosecution based on Restorative Justice for traffic accident cases that due to negligence result in the death of another person, the Prosecutor as the Public Prosecutor has an important role so that these efforts can be implemented, this is as regulated in Article 3 paragraph (5) of Perja No. 15 of 2020 which stipulates that the termination of prosecution based on restorative justice as referred to in paragraph (4) is carried out by the public prosecutor responsibly and submitted in stages to the Head of the High Prosecutor's Office. In the application of termination of prosecution based on Restorative Justice based on Perja No. 15 of 2020 carried out by the Public Prosecutor of the Asahan District Attorney's Office. The author clearly describes the case as follows:

1. Position Case

Full Name	: HERWIN SIRAIT
Place of Birth	: Mandoge
Age/Date of birth	: 39 years / October 08, 1984
Male gender	
Nationality/Citizenship	: Indonesia
Occupation	: Self-employed
Education	: High School

That it started on Sunday, July 30, 2023 at around 11:30 WIB, the Suspect who was riding a Honda Vario Motorcycle with the number plate BK-3177-VBG from the direction of Mr. Mandoge towards Kisaran together with the Suspect's wife, namely witness Dewi Nilam Sari and the Suspect's son, namely Abil Nizam Sirait. The Suspect saw a cold diesel truck parked on the left side of the road, where when the Suspect was about to overtake the cold diesel truck, the victim Krisna Pratama crossed by running across the road from the right shoulder to the left shoulder with the distance being too close between the Suspect and Krisna Pratama so that the Suspect could not control the speed of his motorbike so that the Suspect's front tire hit Krisna Pratama's left waist so that the Suspect together with witnesses Dewi Nilam Sari and Abil Nizam Sirait fell in the middle of the road with Krisna Pratama. Not long after, the community came to help by taking the suspect, witnesses Dewi

Nilam Sari, Abil Nizam Sirait and Krisna Pratama to the Sari Ramadhan Sei Silau Clinic to get treatment. As a result of the incident, Krisna Pratama was lying on the side of the road with bleeding from his ears and unconscious, not long after Krisna Pratama died while being treated at the Sari Ramadhan Pratama Clinic according to the Death Certificate No. 10749 / SKM / RM / RSUMSVII / 2023 dated July 31, 2023 which was made and signed by Dr. Desi Mayang Sari.

2. The Termination of Prosecution Process Based on Restorative Justice

Based on the case explained above, the Public Prosecutor carried out the termination of prosecution based on Restorative Justice on October 5, 2023 at the Asahan District Attorney's Office where the Termination of Prosecution based on Restorative Justice was carried out by taking into account:

- a. The interests of victims and other legally protected interests
- b. Avoidance of negative stigma. Avoidance of retaliation. Response and harmony of society. Decisions, morality and public order

The peace process is carried out in the following manner:

- a. Peace efforts were made.

Before making peace efforts, the Public Prosecutor identifies whether the traffic accident case that due to his negligence resulted in the death of another person can be stopped through restorative justice. And after that the peace efforts are carried out by the Public Prosecutor at the time of the transfer of responsibility for the Suspect and evidence from the Police to the Prosecutor's Office (stage two), in which case the Public Prosecutor tries to encourage or offer between the perpetrator and the victim to resolve the case peacefully without going through the court process. That the interests of the victim represented (the victim's parents), namely witness Suwardi, remain protected by first asking about the willingness to terminate the prosecution.

- b. Peace process

At this stage the Public Prosecutor becomes a facilitator by providing facilities or convenience in the peace process and helping the parties make plans to achieve the goal. With the door of forgiveness from the victim's parents in order to avoid retaliation by putting the Suspect in prison, which does not rule out the possibility that at a later time it will cause the Suspect's revenge on the victim.

- c. Implementation of peace results

Based on the results of the peace agreement of the parties in the case above, the Suspect is required to apologize to the victim for his actions and regarding the achievement of the peace agreement with the condition that the Suspect will build a bridge near the victim's house. The Public Prosecutor in the case above can immediately make a report and memorandum of opinion and a peace agreement between the victim and the Suspect facilitated by the Public Prosecutor and in this case as a mediator in the case witnessed by the Victim's Parents, Community Leaders and Investigators.

- d. Submission of application for termination of prosecution in stages

That the Public Prosecutor of the Asahan District Attorney's Office then submitted a request for Termination of Prosecution Based on Restorative Justice to the North Sumatra High Prosecutor's Office, namely through the Head of the High Prosecutor's Office and the Assistant for General Crimes. After the case was exposed, the leadership assessed the case and approved it so that the request for termination of prosecution based on Restorative Justice received approval to be exposed to the Attorney General through the Deputy Attorney General for General Crimes (JAMPIDUM). And on October 18, 2023, the case was exposed to the Attorney General through the Deputy Attorney General for General Crimes (JAMPIDUM) and his staff which was carried out online and was also attended by the Head of the North Sumatra High Prosecutor's Office, the Assistant for General Crimes of the North Sumatra High Prosecutor's Office and his staff, the Head of the Asahan District Prosecutor's Office, the Head of the General Crimes Section of the Asahan District Prosecutor's Office, the Facilitator Prosecutor in a traffic accident case which due to his negligence resulted in the death of another person. That after a presentation was made to the Deputy Attorney General for General Crimes and the Deputy Attorney General for General Crimes, it was agreed that the prosecution would be terminated based on restorative justice.
 - e. Approval of Case Settlement Based on Restorative Justice

After the case has been approved for Case Settlement Based on Restorative Justice by the Deputy Attorney General for General Crimes, the Facilitator Prosecutor will then make a Case Settlement Decree Based on Restorative Justice.
 - f. Notification of Case Settlement Based on Restorative Justice

After the case has been approved for Case Settlement Based on Restorative Justice by the Deputy Attorney General for General Crimes, the Facilitator Prosecutor will then send a Notification Letter of Case Settlement Based on Restorative Justice to the Police Investigator and the Court.
3. Analysis Application of Termination of Prosecution Based on Restorative Justice Regarding the Traffic Accident Case Due to Negligence Resulting in the Death of Another Person at the Asahan District Attorney's Office on behalf of the Suspect Herwin Sirait.

Based on the requirements for implementing the termination of prosecution based on Restorative Justice as explained in Perja No. 15 of 2020 Article 5 paragraph 1, in cases of traffic accidents due to negligence resulting in the death of another person, the Suspect only meets the first requirement, namely the Suspect has committed a crime for the first time. Meanwhile, regarding the second requirement, violating Article 310 paragraph (4) of Law of the Republic of Indonesia No. 22 of 2009 concerning Traffic and Road Transportation and is subject to a maximum imprisonment of 6 years as exceeding the criminal threat stipulated in Article 5 paragraph 1 letter B, namely being subject to a prison sentence of no

more than 5 years and regarding the third requirement, the loss or fine imposed on the Suspect is a maximum of IDR 12,000,000 (twelve million rupiah) as exceeding the value of the evidence or the value of the loss caused by the criminal act in Article 5 paragraph 1 letter C is not more than Rp. 2,500,000,- (two million five hundred thousand rupiah). But in this case termination of prosecution based on Restorative Justice can be done because the case is related to property and a crime committed due to negligence as stated in Perja number 15 of 2020 Article 5 paragraphs 2 and 4, and the Suspect has only committed a crime for the first time as explained in the contents of the Circular of the Deputy Attorney General for General Crimes Number 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice in letter E point C where in the case of a crime committed due to negligence, termination of prosecution based on restorative justice can be carried out if the Suspect has only committed a crime for the first time (Perja number 15 of 2020 Article 5 paragraph 1 letter A) and the Victim who in this case is represented by the Victim's family agrees to the apology and agrees to make peace with the following conditions: namely the suspect will build a bridge near the victim's house.

4. **The Role of Public Prosecutors in the Implementation of Termination of Prosecution Based on Restorative Justice in Traffic Accident Cases Due to Negligence Resulting in the Death of Another Person at the Asahan District Attorney's Office.**

The role of the Public Prosecutor in the context of Restorative Justice is as a facilitator, in addition the Public Prosecutor also plays a role as a mediator in the Restorative Justice process. Some aspects of the role of the Public Prosecutor include:

a. **As a facilitator**

The Public Prosecutor acts as a facilitator who helps the parties involved in the case to understand the purpose of Restorative Justice. They guide the Restorative Justice process with the aim of achieving mutual understanding and a just resolution.

b. **Emotional mediator**

In many cases, the parties involved are still in an emotional state due to the experience of conflict. The Public Prosecutor plays a role in calming emotions, creating a safe environment, and helping all parties to speak calmly and openly in this case the Public Prosecutor as a mediator who seeks to resolve the case through deliberation.

c. **Discussion Listener and Facilitator**

Public Prosecutors listen to the opinions and feelings of all parties involved in the conflict. They facilitate discussions that allow each party to express their views.

d. **Looking for a profitable deal**

The Public Prosecutor works to reach a common ground in deliberation, which results in an agreement that benefits both parties involved in the case and Restorative Justice can be implemented if the Victim and the Suspect agree to make peace without coercion or intimidation from anyone.

e. **Encouraging accountability**

In addition to seeking mutually beneficial solutions, the Public Prosecutor also ensures that perpetrators of criminal acts understand the consequences of their actions and are responsible for their actions.

With this careful and sensitive role, the Public Prosecutor helps facilitate and mediate the Restorative Justice process with the aim of achieving reconciliation, restoration, and peace between the perpetrator and the victim, as well as the affected community. During this process, the parties involved in the criminal case, including the perpetrator, victim, and related parties, can talk, discuss, and try to reach a fair agreement for all parties. Facilitation from the Asahan District Attorney's Office is very important to ensure that the process runs smoothly and supports efforts to achieve peace.

CONCLUSION.

The application of Restorative Justice carried out by the Public Prosecutor of the Asahan District Attorney's Office in the above case provides benefits in enforcing criminal law which does not focus on revenge but on restoring the original state and enforcing principles such as justice, public interest, proportionality, criminal law as a last resort, fast, simple and low-cost trials. The legal regulation for termination of prosecution based on restorative justice is currently available through the Indonesian Attorney General's Regulation No. 15 of 2020, but still requires strengthening in the form of explicit regulation in the Criminal Procedure Code. The implementation process is structural and gradual, involving the Prosecutor as a facilitator in the peace process. With proper implementation, Restorative Justice can be a more humane, efficient and peaceful legal mechanism. The application of termination of prosecution based on Restorative Justice at the Asahan District Attorney's Office is a progressive step in the Indonesian criminal justice system. Although not yet perfect, this approach is able to present a more humane, efficient, and socially rehabilitative justice than just formal punishment in court.

The process is carried out through deliberation involving the perpetrator, victim, families of both parties, and community leaders, with certain conditions such as peace, recoverable losses, and the perpetrator has never been convicted. The application of termination of prosecution based on Restorative Justice for traffic accident cases due to negligence resulting in death at the Asahan District Attorney's Office in the application of restorative justice at the Asahan District Attorney's Office has been carried out in accordance with applicable regulations. In cases of traffic accidents due to negligence resulting in death, termination of prosecution can be carried out if the victim or his/her family has forgiven the perpetrator and a peace agreement is reached. The prosecutor has an important role in facilitating the mediation process and ensuring that formal and substantive requirements are met. Case studies show that this approach can create a more humane solution and reduce the burden of cases in court.

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