

## RECONSTRUCTION OF RESTORATIVE JUSTICE POLICIES IN THE CASE OF LAKA LANTAS RESULTING IN DEATH BASED ON THE VALUE OF JUSTICE

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### **Abstract**

*This study aims to study; (1) Why is the policy for handling the incident resulting in death not based on the value of justice?; (2) What problems occurred in the implementation of the implementation of restorative justice in the case of the current laka resulting in death?; (3) Reconstruction of justice restoration policies in cases of later laka resulting in death based on the value of justice?. The research method used is empirical juridical with a legal approach, concept approach, and case studies. The results showed that; (1) The current policy for handling incidents resulting in death is not based on the value of justice due to several things including; a) legal factors; the absence of regulation against unintentional negligence that causes traffic accidents; b) Law Enforcement factors; Law Enforcement hesitancy to handle cases due to the uncooperation of perpetrators and witnesses; c) means factors; limited facilities and infrastructure compared to Police Jurisdiction; d) Low public legal awareness of traffic order; e) The legal culture of society; Peacefully traffic accident cases without law enforcement involvement. (2) Various problems that occur in the implementation of the implementation of restorative justice in the case of past laka that result in death at this time due to several things including; a) legal factors; the absence of guidelines governing the limits of law enforcement discretion; b) Law Enforcement factors; Law Enforcement has difficulty handling cases due to the uncooperation of perpetrators and witnesses; c) means factors; limited facilities and infrastructure compared to Police Jurisdiction; d) Community legal awareness; ignorance of the public that the position of the peace letter does not invalidate the claim in Court; e) The legal culture of society; The public tends to shy away from Law Enforcement in resolving traffic accident disputes and fear being a witness in the event of an accident that causes someone to die. (3) Reconstruction of justice restoration policies in cases of past laka resulting in death based on justice values can be carried out in several cases including; a) legal factors; Creation of guidelines that regulate the limits of discretionary authority of law enforcement; b) Law Enforcement factors; Improve the ability, knowledge, and skills of law enforcement; c) means factors; improve facilities and infrastructure in accordance with Police Jurisdiction; d) Public legal awareness; increase public legal awareness that the position of the peace letter does not invalidate claims in Court; e) The legal culture of society; fostering a culture of community law that is orderly and cooperative with law enforcement.*

**Keywords:** Reconstruction, Policy, Restorative, Accident, Traffic, Death.

## A. INTRODUCTION

The Unitary State of the Republic of Indonesia is a state based on Pancasila and the 1945 Constitution. The Republic of Indonesia is a country based on law. Indonesia adheres to the notion of the rule of law (<sup>1</sup>*rechtstaat*), not based on mere power (*machstaat*). This means that the Republic of Indonesia is a democratic state of law based on Pancasila and the 1945 Constitution. Indonesia is a country that aims to realize welfare for the people (*welfare* <sup>2</sup>*state*). This noble goal will be impossible to achieve without development in various fields of life as an absolute condition for achieving this state ideal as stated in the fourth paragraph of the Preamble to the 1945 Constitution.

Traffic problems are interesting, because traffic regulations are non-spiritual or neutral legal systems. Enforcing traffic rules is a daunting task. In traffic regulations, there are two tasks, namely maintaining public order and public peace. In addition, community members basically want freedom in using road facilities, while law enforcement is tasked with creating security and order.<sup>3</sup>

The National Police Headquarters shows statistical data on traffic accidents in 2020. As a result, when compared to the 31st week, there was an increase of 260 incidents or 26.7 percent. Based on the data collected by the National Police Corps, the first number of laka numbers for the 32nd week of 2020 was 1,234 accidents. As for the details, as many as 210 died, then seriously injured as many as 181 people, slightly injured as many as 1,464 people, causing material losses of Rp2, 2 billion. The number of laka figures then in the 31st period of 2020, there were 974 accidents, 189 people died, 142 people were seriously injured, 1,070 people were slightly injured, causing material losses of IDR 1.6 billion.<sup>4</sup>

Details of the Polda which has the highest number of traffic accidents in the 32nd period of 2020, namely the Central Java Regional Police the number of laka then as many as 396 incidents, 35 people died, 12 people were seriously injured, 481 people were slightly injured, material losses amounted to Rp3.2 million. Second, East Java Police, the number of laka then as many as 271 incidents, 48 people died, 28 people were seriously injured, 342 people were slightly injured, and material losses were Rp322,400 million. While the West Java Regional Police, the number of laka then as many as 115 incidents, 20 people died, 47 people were seriously injured, 116 people were slightly injured, and material losses were Rp2,800,750 million. While the Metro Jaya Regional Police had 56 incidents, 6 people died, 11 people were seriously injured, 49 were slightly injured, material losses were Rp167,600 thousand. Finally, the North Sumatra Regional Police, the number of laka numbers was 50 incidents, 15 people died, 27 people were seriously injured, 64 people were slightly injured, material losses amounted to Rp1,071,800 million.

Often accidents that occur on the highway are actually the result of the negligence of the road users themselves. The accident that occurred was quite concerning because the victims were not only property but also lives. A person who commits negligence in driving a motor vehicle, especially one that results in another person losing his life (dies), makes peace with the victim's family. Even though there has been peace between the parties, criminal cases that cause other people to die continue as ordinary criminal cases.

Against these incidents, it often raises problems such as how the function of the peace letter made by the perpetrator of the crime with the family of the deceased. Also what are the legal consequences of the peace letter made by the perpetrator of the crime and the victim's family for the judge in deciding the case.

Efforts to resolve problems outside the court carried out by criminal offenders (their families) and victims of criminal acts (their families) are expected to be the basis for consideration in the process of examining criminal offenders in court in imposing criminal sanctions by judges / judges. *Restorative justice* is a series of criminal problem resolution processes outside the court that aims to restore the

relationship between the parties and the losses suffered by victims of crime and is expected to be used as a basis for consideration for the panel of criminal court judges in alleviating criminal sanctions imposed on the perpetrators of the crime. The settlement of traffic accident cases in Indonesia is mostly carried out outside the court through the peace of both parties, even though the accident caused the loss of life of the victim or died. On the other hand, criminal liability for the loss of one's life is a criminal act that must be accounted for.

## B. FRAME OF MIND

Peace in the case of traffic accidents is mostly done by the community, although legally there is no basis. The only handle on the part of the investigator to do so is the willingness of the victim / exposed to the crime or his family to sign a peace letter so that the victim states that he will not hold charges for the signing event is that with the stamp of peace, the victim states that he will not hold charges for the events that occur, both criminally and civilly. The basis of this statement makes the investigator have a handle to stop the investigation. Although there is no legal handle, it turns out that adhering to a statement signed by the victim / victim's family, is quite effective in making the settlement of criminal cases outside the court peaceful, never a problem so that such practices still occur in practice.<sup>5</sup>

There are two word-forming elements: *Strafbaar* and *feit*. The word *feit* means "part of reality", while *Strafbaar* means "punishable". So literally the word *Strafbaarfeit* means part of the punishable reality. According to Wirjono Projodikoro that criminal act means an act whose perpetrator can be subject to criminal punishment, and the perpetrator can be said to be a "subject" of a criminal act. There are two elements of a criminal act, namely:<sup>6</sup>

1. Objective element, namely an action (action) that is contrary to the law and heeds the prohibited legal consequences with the threat of punishment. The main point of objective understanding here is the action.
2. Subjective, that is, the actions of a person whose consequences are not desired by law. The nature of this element prioritizes the presence of a perpetrator (a person or several people).<sup>7</sup>

It has been argued that punishment is a last resort. We will limit the use of crime within its limits and must also strive to first apply other sanctions that are not criminal in nature. Penalties should be held only when the norms concerned are essential for the life and independence of other members of society or for the proper functioning of community life.<sup>8</sup>

To see whether someone can be held accountable before the court, it must be determined whether the perpetrator of the criminal act committed a mistake intentionally (*dolus*) or negligence / negligence (*culpa*). In criminal law, the element of intentionality or what is called *opzet*. If a formulation of a criminal act contains an act intentionally or commonly called *opzettelijk*, then this intentional element controls or includes all other elements that are placed behind it and must be proven.<sup>9</sup>

Negligence (*culpa*) by science and jurisprudence has indeed been interpreted as a lack of foresight about the possible consequences or a lack of prudence and which to distinguish it is often used in doctrine unconscious forgetfulness or onbewuste schuld and conscious negligence or *bewuste schuld*.<sup>10</sup>

In the realm of unconscious negligence (*onbewuste culpa*) the perpetrator does not imagine or foresee the occurrence of an effect prohibited and punishable by law, when he should have taken into account the occurrence of that effect. He did not take into account the possibility of prohibited and criminally threatened consequences.<sup>11</sup>

In the realm of negligence (*culpa*) is contained the meaning of guilt in a broad sense that is not intentional. There is a difference between intentionality and negligence where in intentionality there is a positive trait, namely the will to do prohibited acts.<sup>12</sup> In this *culpa* or negligence, the most important element is that the perpetrator has the awareness or knowledge that the perpetrator should be able to imagine the consequences caused by his actions, or in other words that the perpetrator can suspect that the consequences of his actions will cause an effect that can be punished and prohibited by law. So from the description above, it can be said that if there is a relationship between the mind of the perpetrator and the consequences arising from his actions or there is a birth relationship which is a causal relationship between the actions of the perpetrator and the prohibited consequences, then criminal punishment can be imposed on the perpetrator for his criminal acts.

The role of the National Police in enforcing traffic laws is very important in maintaining public order and security, as stipulated in the provisions of Law No. 2 of 2002 concerning the National Police it is clearly formulated that the main duties of the National Police are law enforcers, protectors, protectors and guides of the community, especially in the context of compliance and compliance with applicable laws. In the provisions of the Law, there are two fundamental main duties of the National Police as contained in the Tribrata and Catur Prasetya Polri. As stipulated in Law No. 2 of 2002, especially in Article 13. In the provisions of Article 13, it is affirmed that the National Police has the duty to:

- a. maintaining public security and order;
- b. enforce the law; and
- c. provide protection, protection and service to the community.<sup>13</sup>

Peace in the case of traffic accidents can be bridged by the National Police during the investigation period, with reference to the principle of obligation, namely to carry out other actions according to the law that are responsible and in the public interest, Police officials in carrying out their duties and authorities can act according to their own judgment, as stipulated in article 5 paragraph (1) letter a number 4 and article 7 letter j of the Criminal Procedure Code, and article 16 paragraphs (1) and (2), article 18 paragraph (1) of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia.

In article 5 paragraph (1) letter a number 4 and article 7 letter j of the Criminal Procedure Code, it is explained that the principle of obligation is to carry out other actions according to responsible law. WITH the explanation meant by other actions is the actions of the investigator for the purposes of investigation provided that:

- 1) not contrary to a rule of law;
- 2) in accordance with legal obligations that require the execution of acts of office;
- 3) such action must be appropriate and reasonable and fall within the environment of his office;
- 4) for proper consideration based on coercive circumstances, and respect for human rights.

Therefore, the rights of suspects in investigations must be presumed innocent, in accordance with the legal principle of "*presumption of innocent*" until a court decision has the force of law. Police investigators cannot immediately carry out investigative activities at will, but there are also limits that

must be followed by these investigators so as not to violate human rights considering that the power of investigators in carrying out these series of actions is too large.<sup>14</sup>

Traffic accident cases that cause victims to die in sentencing before the change in the law judges refer to the Criminal Code which regulates criminal acts that cause a person to die or be injured due to wrongdoing in Article 359 of the Criminal Code, and after the existence of a special law regarding traffic, it now refers to Article 310 paragraph (4) of Law No. 22 of 2009 concerning Traffic and Road Transportation. In addition to having different forms of criminal sanctions, the two articles also differ in the core contained in them.

Based on this, it is important to analyze the juridical implications of peace in cases of traffic accidents resulting in death against criminal charges and investigations, it is necessary to conduct research to determine the background, legal basis, and juridical implications of the implementation of peace in cases of traffic accidents resulting in death against criminal charges and investigations.

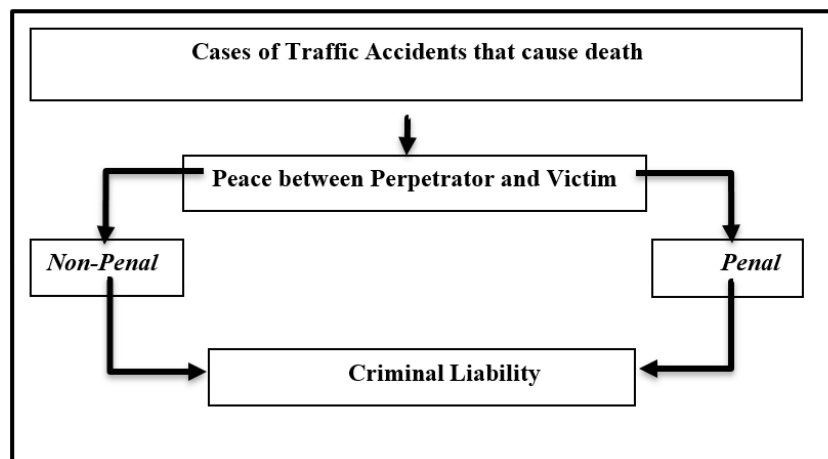


Figure 1: Frame of Mind

### C. METHOD

Research in this dissertation is included in the type of research with an empirical juridical approach which in other words is a type of sociological legal research and can also be called field research. Juridical approach (law is seen as a norm or <sup>15</sup>*das sollen*), because in discussing this research problem using legal materials (both written and unwritten laws or both primary legal materials and secondary legal materials).

Empirical approach (law as social, cultural reality or *das sein*), because in this study used primary data obtained from the field. So, the empirical juridical approach in this study means that analyzing problems is done by combining legal materials (which are secondary data) with primary data obtained in the field.

Research to obtain accurate and authentic data because it is done by collecting data sources both primary and secondary data, which are adjusted to the research approach. To classify primary data, data collection is carried out in several ways including observation and documentation.<sup>16</sup>

## D. DISCUSSION

### 1. The current policy of handling laka lantass that result in death is not currently based on the value of justice

The National Police Headquarters shows statistical data on traffic accidents in 2020. As a result, when compared to the 31st week, there was an increase of 260 incidents or 26.7 percent. Based on the data collected by the National Police Corps, the first number of laka numbers for the 32nd week of 2020 was 1,234 accidents. As for the details, as many as 210 died, then seriously injured as many as 181 people, slightly injured as many as 1,464 people, causing material losses of Rp2, 2 billion. The number of laka figures then in the 31st period of 2020, there were 974 accidents, 189 people died, 142 people were seriously injured, 1,070 people were slightly injured, causing material losses of IDR 1.6 billion.<sup>17</sup>

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The regulation of traffic accidents in the Criminal Code is regulated in several articles, including: Article 359 reads: "Whoever for his fault causes the death of a person shall be punished with imprisonment for not more than five years or imprisonment for not more than one year". The criminal sanctions given to perpetrators of criminal acts in this article are imprisonment for a maximum of five years or imprisonment for a maximum of one year.

Various elements of negligence that can cause accidents include the following:<sup>18</sup>

- a. Negligence due to people, for example using mobile phones when driving, tired and drowsy body condition, driving drunk vehicles, lack of understanding of traffic signs. To see whether a person can be held accountable before the court, it must be determined whether the perpetrator of the crime committed a deliberate mistake (*dolus*) or negligence / negligence (*culpa*).
- b. Negligence Due to Vehicles, vehicle factors that often haunt accidents are brake functions, tire conditions, to lighting. There are several factors that cause vehicles to have accidents such as vehicles with non-standard modifications, long brakes, tire conditions that are no longer suitable for use, load limits that exceed vehicle transportation limits

Accidents often cause problems such as how the function of a peace letter made by the perpetrator of a criminal act with the family of the deceased. Also what are the legal consequences of the peace letter made by the perpetrator of the crime and the victim's family for the judge in deciding the case. In the conventional division of law, criminal law belongs to the field of public law. This means that criminal law regulates the relationship between citizens and focuses on the public interest or public interest. Historically, legal relations that existed were originally private / private relationships, but in the course of time there were things that were taken over by groups or tribes and finally after the

establishment of the state were taken over by the state and made public interest. The right to prosecute criminal acts lies in the apparatus of the state, namely the public prosecutor.<sup>19</sup>

Law enforcement is one of the characteristics of the rule of law. As the priority of the implementation of the duties of the National Police is law enforcement. The duties of the police are more directed towards how to crack down on perpetrators of crime while protection and community service are the second priority of police action. As a manifestation of the role of the National Police, in taking every policy must be based on existing guidelines. The guidelines referred to by the National Police are part of the *Criminal Justice System* as investigators who have law enforcement capabilities.<sup>20</sup>

Law enforcement in the policy of handling past laka resulting in death is currently not based on the value of justice, including due to several factors as follows:

#### **a) Legal Factors: Laws and Regulations**

Based on Law Number 22 of 2009 concerning Road Traffic and Transportation, a Traffic Accident is an unexpected and accidental Road event involving a Vehicle with or without other Road Users resulting in human casualties and/or property losses.

Article 310 of Law No. 22 of 2009: (1) Every person who drives a Motor Vehicle which due to his negligence results in a Traffic Accident with damage to Vehicles and/or goods as referred to in Article 229 paragraph (2), shall be punished with a maximum imprisonment of 6 (six) months and/or a maximum fine of Rp1,000,000.00 (one million rupiah) (2) Any person who drives a Motor Vehicle which due to his negligence results in a Traffic Accident with the victim minor injuries and damage to vehicles and/or goods as referred to in Article 229 paragraph (3), punishable with a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp2,000,000.00 (two million rupiah). (3) Any person driving a Motor Vehicle whose negligence results in a Traffic Accident with injuries. severe as referred to in Article 229 paragraph (4), punishable with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp10,000,000.00 (ten million rupiah). (4) In the event of an accident as referred to in paragraph (3) that results in the death of another person, shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp12,000,000.00 (twelve million rupiah).

Article 310 paragraph (1) of Law No. 22 of 2009: Every person who drives a Motor Vehicle which due to his negligence results in a Traffic Accident with damage to Vehicles and/or goods as referred to in Article 229 paragraph (2), shall be punished with a maximum imprisonment of 6 (six) months and/or a maximum fine of Rp1,000,000.00 (one million rupiah).

Traffic accidents occur as a result of negligence and result in material loss. In this case, there is a need for an investigation process to prove that the accident occurred purely due to negligence (Human Error) as evidenced by witness statements and other evidence in the form of crime scene sketches (crime scenes) and picture sketches. If it has been fulfilled, it is necessary to make a standard reference / provision for the conflicting parties so that there is no confusion in making decisions, where the investigator is also required to be a professional investigator by referring to the normative legal principle that the settlement of cases is only at the court table, while the conflicting parties demand to be completed at the investigation stage because they have made peace or not compensation for losses (*Restorative Junction*).<sup>21</sup>

If at this stage of the investigation process between the parties to the dispute there is an agreement to reconcile and without being facilitated by the investigator, then in this situation the investigator and the conflicting party really need a standard reference for legal certainty of dispute resolution outside the court because the parties already feel that justice is obtained outside the court, but the

investigator cannot facilitate the interests of the parties due to the provisions governing. The investigator adheres to the normative rule of law, that an event/case gets legal certainty only at the trial table at the court level.

In the Police institution there is a program called Community Policing (Polmas) which prioritizes police members (Bhabinkamtibmas) in the community as a pioneer of Win-win solutions for people who have problems in the light category and can be solved without having to make a police report, so that the community also feels satisfied and gets legal certainty outside the court. Law Number 2 of 2002 Article 18 concerning Police Discretion in the public interest, Police Officials of the Republic of Indonesia in carrying out their duties and authorities can act according to their own assessors.

Authorities are given the authority to choose whether or not to act legally or illegally based on the following provisions:

- a. Action must be absolutely necessary (noodzakelijkheid, onmisbaar) or the principle of necessity.
- b. The action taken must be strictly in the interest of the duty of the Police (zakelijk, sachlich).
- c. The most appropriate action to achieve the goal is the loss of a disturbance or the absence of something feared, in this case used as a measure of the achievement of the goal (zweck massiq, doel matiq).
- d. If objective considerations predict that the legal provision is the most appropriate solution to the problem of all alternatives, then the legal provision is applied. And conversely, if the legal provisions will not be profitable, especially if they will cause worse situations and conditions than before, then the legal provisions will not be applied or set aside or marginalized.

"Other actions" that can be taken by the police in terms of law enforcement are carried out under several conditions, namely; 1) Not contrary to a rule of law; 2) Be in harmony with the legal obligation requiring such action; 3) Must be proper, reasonable, and included in the environment of his position; 4) Reasonable consideration based on compelling circumstances; 5) Respect for human rights.

#### **b) Law Enforcement Factors**

Law enforcement is one of the characteristics of the rule of law. As the priority of the implementation of the duties of the National Police is law enforcement. The duties of the police are more directed towards how to crack down on perpetrators of crime while protection and community service are the second priority of police action. As a manifestation of the role of the National Police, in taking every policy must be based on existing guidelines. The guidelines referred to by the National Police are part of the *Criminal Justice System* as investigators who have law enforcement capabilities. All parties who apply (tangible manifestation) and enforce the law in everyday life can be called law enforcers.<sup>22 23</sup> The issue that affects the effectiveness of written law in terms of officers will depend on the following: To what extent officers are bound by existing regulations. To what extent officers are allowed to give discretion. What kind of example should officers set to the community. To what extent is the degree of synchronization of the assignments given to officers so as to give firm limits to their authority<sup>24</sup>

Law enforcement factors, namely parties who form and apply the law. Law enforcers must have good personality qualities and be professional in carrying out law enforcement. In carrying out their duties, law enforcers must always uphold the human rights of the people and the laws of the State and maintain security and order and peace in society. In this case, law enforcers in traffic accident cases are the Traffic Unit Police, both the Head of the traffic unit (Kasat Lantas), the Head of the Unit (Kanit) and other Satlantas police members. Satlantas Police who handle traffic accident cases in minor accident cases help parties who want to settle their cases out of court peacefully.



### **c) Facilities and Infrastructure Factors**

Factors of facilities or facilities that support law enforcement. Facilities and infrastructure are needed in carrying out law enforcement, facilities and infrastructure in handling traffic and road transportation cases are needed, namely traffic unit police personnel (Satlantas) who are educated, skilled and professional, Satlantas office as a place to investigate and investigate traffic accident cases, the existence of adequate equipment, namely communication tools and technological tools such as computers and laptops used by the Satlanta police in making accident reports and Case Minutes (BAP) contained in the Satlantas office, traffic accident data tables contained in the Satlantas room, tables of Laka Lantas investigation mechanisms (traffic accidents), maps of accident-prone areas.

Factors that become obstacles in law enforcement through further efforts are budget factors and infrastructure facilities, law enforcement will run well if all supporting components are available including facilities and facilities that support law enforcement itself, the Police have operational facilities such as four-wheeled and two-wheeled vehicles that are very limited in number, to supervise law enforcement at all times, until now. Likewise, the budget provided to carry out the duties of the Police is very minimal and not in accordance with the broad scope of duties and authority of the police, thus one of the obstacles in the implementation of Police duties is the limited facilities and infrastructure including the operational budget.

### **d) Factors of Public Legal Awareness**

Legal awareness and legal obedience are two things that determine whether or not the implementation of legislation or the rule of law is effective in society. Legal awareness, legal compliance, and the effectiveness of legislation are three interconnected elements. Often people confuse legal awareness and legal obedience, even though the two are very closely related, but not exactly the same. These two elements determine whether or not the implementation of legislation in society is effective. Low public legal awareness will hinder law enforcement, on the contrary, high legal awareness can help law enforcement in the community.<sup>25</sup>

Legal methods will be effective, if they include philosophical, juridical and sociological enforcement. The sociological enforceability of a legal norm is strongly influenced by the level of legal awareness of the community, this contains the understanding that no matter how professional law enforcement officers are in carrying out their duties if not accompanied by public legal awareness, it will be difficult to hinder in carrying out their duties.<sup>26</sup>

The problem that occurs is that people's legal awareness in traffic order is still very low, this is because people will obey the law for fear of sanctions not because of self-protection.

### **e) Cultural Factors of Community Law**

Culture as a habit carried out by society regarding the treatment of a rule. It can be seen whether or not there is a treatment of rules that are made habitual by the community, either good habits or those that are contrary to the rules. In general, public awareness of the law is high resulting in citizens complying with the provisions of applicable laws and regulations. Conversely, if citizens' awareness of the law is very low, then the degree of compliance with the law is also not high.<sup>27</sup>

The legal culture that occurs in communities that experience traffic accidents is to make peace without mediation from law enforcement officials including the Police.

Every case of traffic accidents that occur on the highway, of course, has legal consequences for the driver of the vehicle. Legal provisions governing fatal accidents that result in injury or death of a person, in general, are the Criminal Code (Criminal Code) and specifically regulated in Law No. 22 of

2009 concerning Traffic. Often people view that traffic accidents that cause injuries and death, absolutely the fault is always on the driver of the vehicle concerned. Meanwhile, according to the prevailing legal theory that a person's fault is seen from the actual incident factor, what factors cause the traffic accident. This can be revealed from the chronology of events, testimonies including eyewitnesses who saw the accident. More specific laws and regulations regulate more specifically, in detail and firmly about traffic on highways / tolls and traffic accidents, including regulating negligence / negligence in driving vehicles to cause injury and death, namely Law Number 22 of 2009 concerning Road Traffic and Transportation ("Law LLAJ").

The pattern of solving problems through alternative channels other than legal or non-litigation processes, among others, through peace efforts, is resolved through mediation, which is one form of the restorative justice approach. Mediation is a method that is often used by all parties involved in a traffic accident who eventually find consensus to resolve the case in a family way. Peace in criminal law in case of traffic accidents often occurs and is applied by the people of Indonesia.

In the provisions of criminal law and Law Number 22 of 2009 concerning Road Traffic and Transportation, the conception of peace as a form of settlement of cases outside the court is completely unknown. Peace in traffic accidents that has been known in the community has no formal legal basis at all so that there is often a case of traffic accidents that has been resolved peacefully (deliberations in customary law), but is still processed to court in accordance with applicable law. Peace between the victim and / or the victim's family and the perpetrator of the crime, does not rule out the possibility of the case can be examined and decided by a formal court, so that even though there has been peace between the parties, the police often continue the case to a formal court hearing on the grounds of claims on the principle of legality.

In formal courts, the peace that occurs is entirely within the authority of the judge, meaning that whether or not the peace is taken into consideration in handing down a decision depends on the judge's policy. This is as it is known that the current Criminal Code does not regulate criminal provision (*strafvoetingsleiddrad*), there are only criminal provision rules (*strafvoetingsregel*). Guidelines and rules for granting crimes are very important to be emphasized by the framer of the law so that judges in giving their decisions in their freedom as judges still have limits set objectively, so the framer of the law should provide several criteria for the granting of crimes by judges.

Peace in criminal law in case of traffic accidents often occurs and is applied by the people of Indonesia. Peace often occurs between the driver who crashes with the victim by means of payment of a sum of money or compensation by the impactor to the victim as reimbursement for medical expenses at the hospital or compensation costs for victims who have died. Usually the victim has felt fair while the perpetrator himself sincerely paid the amount of money. Dispute resolution of traffic accidents needs to focus on *restorative justice*. The restorative justice paradigm focuses on the responsibility of the perpetrator to compensate the victim for the criminal act committed on the one hand and the willingness of the victim to forgive the perpetrator's guilt on the other.<sup>28</sup>

The position of the peace letter between the perpetrator and the victim in the case of traffic accidents often causes controversy in the application of criminal law so that it causes many polemics. The opinion that the legal process must still be carried out and must be enforced indiscriminately (*rule of law and law enforcement*), because "negligence" which includes culpa offense / negligence, namely when driving a vehicle to cause an accident and result in the death of the victim must still be processed legally. On the other hand, the existence of a peace letter shows that both sides have agreed to make peace.

By referring to the concept of restorative justice, perpetrators of criminal acts in traffic accidents are morally obliged to provide compensation to victims. The main goal is that good relations between victims and perpetrators damaged by criminal acts by perpetrators can be restored. In other words, the primary goal of *restorative justice* is not in vengeance, but rather in healing and peace. Thus, restitution transformed the criminal justice system known as Static towards a humanistic criminal hukum.<sup>29</sup>

## **2. Various problems that occurred in the implementation of the implementation of *restorative justice* in the case of the past laka that resulted in death today**

Legal problems in various problems that occur in the implementation of restorative justice in cases that result in death are currently constrained in several things, including:

### **a) Legal Factors: Laws and Regulations**

Police discretion is one of the "non-penal" channels used in solving crimes committed by the National Police, in this case food crimes. Related to this, basically in the law enforcement system in Indonesia, especially at the police level, it has been known and possible to take *discretionary* actions as a form or effort to accommodate legal values that live in the community. Discretion is defined as an act outside the rule of law carried out by police officers in the public interest, humanity, justice and education.<sup>30</sup>

The police are authorized to take any action, as long as they meet the provisions of numbers 1 to 5 mentioned above. The police in enforcing criminal law have discretionary authority as stated in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police (hereinafter referred to as the Police Law) which states that "(1) In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment; (2) The implementation of the provisions referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations, as well as the Code of Professional Ethics of the National Police of the Republic of Indonesia".<sup>31</sup>

The formulation of the authority of the National Police of the Republic of Indonesia in Article 18 paragraph (1) of Law Number 2 of 2002 is an authority derived from the principle of general police obligation (*plichtmatigheids beginsel*), which is a principle that gives authority to police officials to *act or not act according to their own judgment*, in the framework of its general obligation to maintain, maintain order and ensure public security. Actions that can be taken by members of the National Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions and are strictly in the public interest.<sup>32</sup>

The entrance to the enforcement of penal mediation is through discretion as the authority of the National Police. The legal basis for discretion for officers of the National Police of the Republic of Indonesia (Polri) in carrying out their duties can be seen in Law Number 02 of 2002 concerning the National Police of the Republic of Indonesia in Article 15 paragraph (2) letter k, it is stated that the National Police of the Republic of Indonesia in accordance with other laws and regulations is authorized to carry out other authorities that fall within the scope of police duties.<sup>33</sup>

Because penal mediation is only based on the discretionary authority possessed by the police, sometimes in the implementation of the title of the case carried out there are many differences in perception of the participants of the case title due to the absence of regulations that regulate it clearly, so that investigators hesitate in applying penal mediation to criminal cases because there are no clear and firm rules governing penal mediation but only based on discretionary authority owned by the police alone, there is no common understanding from investigators regarding the application of penal

mediation, and the absence of SOPs (Standard Operating Procedures) regarding penal mediation mechanisms in criminal cases including traffic accident cases.

One of the legal problems in penal mediation has not been regulated concretely in the Criminal Justice System in Indonesia, but is only known at the level of discretion in law enforcement. The implementation of penal mediation in traffic accident cases is sometimes hampered by the willingness of victims who still want the case to proceed to the next stage and do not want to solve it deliberately.

#### **b) Law Enforcement Factors**

Law enforcement can be defined as the administration of law by law enforcement officers and by everyone who has interests in accordance with their respective authorities according to applicable legal rules. Criminal law enforcement is a unified process beginning with the investigation, arrest, detention, trial of the accused and ending with the correction of the convict. Law enforcement is the activity of harmonizing the relationship of values described in established rules and attitudes of action as a series of final stage value elaboration.<sup>34 35</sup>

Law enforcement is part of the overall law in force in a State that provides elements and rules, namely:<sup>36</sup>

- a. Determine actions that should not be done accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition.
- b. Determine and in what cases those who violate the prohibition may be charged or punished as threatened.
- c. Determine in what manner the criminal imposition can be carried out if the person suspected of violating the prohibition.

One of the legal problems in penal mediation has not been regulated concretely in the Criminal Justice System in Indonesia, but is only known at the level of discretion in law enforcement. The implementation of penal mediation in traffic accident cases is sometimes hampered by the willingness of victims who still want the case to proceed to the next stage and do not want to solve it amicably with a family spirit. For something like this, the investigator cannot resolve it through penal mediation because the conditions for the agreement between the two parties have not been met. In addition to being hampered by the victim who still wants the case to continue, the suspect's uncooperation, for example, not admitting his actions, will also hinder the agreement between the two parties through penal mediation. In addition, the absence of clear and unequivocal rules governing penal mediation is also another obstacle in its application, investigators are sometimes hesitant in implementing this penal mediation.

#### **c) Facilities and Infrastructure Factors**

Factors that become obstacles in law enforcement through further efforts are budget factors and infrastructure facilities, law enforcement will run well if all supporting components are available including facilities and facilities that support law enforcement itself, the Police have operational facilities such as four-wheeled and two-wheeled vehicles that are very limited in number, to supervise law enforcement at all times, until now. Likewise, the budget provided to carry out the duties of the Police is very minimal and not in accordance with the broad scope of duties and authority of the police, thus one of the obstacles in the implementation of Police duties is the limited facilities and infrastructure including the operational budget.

On the other hand, not every legal case carried out by law enforcement by the Police requires a large budget, but on the contrary there are also some legal cases that require a large budget and the support of adequate infrastructure. This is considering the difficult or easy factor of law enforcement carried out.

The addition of adequate facilities and infrastructure, especially in the field of technology and information, is currently needed, considering that in law enforcement in the current era of technology 5.0, facilities and infrastructure are needed that support, planned forms of crime or lawlessness go hand in hand with the development of science and technology

#### **d) Factors of Public Legal Awareness**

Law enforcement comes from the community, and aims to achieve peace in society. The community greatly influences the enforcement of these laws. People's opinions about the law greatly affect the legal compliance of the community. Just like the community in resolving traffic accident cases outside the court by peaceful means. People assume that by implementing a peaceful settlement of a case, they have obeyed the law and have enforced the law, so that there is harmony in relations in society. People consider traffic accidents to be accidental disasters from God and if possible to resolve the case peacefully. So that the settlement of the case does not have to be extended to the Court. Peaceful settlement of cases occurs when the family of the perpetrator who comes to the victim intends to settle their case in a familial manner. The parties, namely the perpetrator and the victim as well as the families of the perpetrator and the victim, make peace together through consensus that the accident case is resolved by them witnessed by the guardian of the victim or the head of the jorong or village head from the victim. The peace resulted in a mutually agreed agreement without coercion and would not demand anything in the future.

The problem that occurs is the legal awareness of the community that the peace made between the perpetrator and the accident victim who died cannot abort the criminal act of taking someone's life is not obeyed and realized by the community. So often peace is done without the knowledge of Law Enforcement. In fact, the position of peace that ultimately gets the peace letter is to be considered by the judge in the trial.

Accidents often cause problems such as how the function of a peace letter made by the perpetrator of a criminal act with the family of the deceased. Also what are the legal consequences of the peace letter made by the perpetrator of the crime and the victim's family for the judge in deciding the case. In the conventional division of law, criminal law belongs to the field of public law. This means that criminal law regulates the relationship between citizens and focuses on the public interest or public interest. Historically, legal relations that existed were originally private / private relationships, but in the course of time there were things that were taken over by groups or tribes and finally after the establishment of the state were taken over by the state and made public interest. The right to prosecute criminal acts lies in the apparatus of the state, namely the public prosecutor.<sup>37</sup>

Every criminal act committed will cause negative consequences in the form of an imbalance in the atmosphere of life that is of good value. To return to that atmosphere and life of good value, an accountability is needed from the perpetrators who have caused the imbalance. And the responsibility that must be carried out by the perpetrators is in the form of devolving community discomfort so that suffering or loss can also be felt. So someone who is convicted means that he carries out a punishment to account for his actions that are considered bad and endanger the public interest. One of the characteristics of criminal law as part of public law can be seen in terms of the involvement of state equipment to prosecute people who have committed criminal acts.<sup>38</sup>

Traffic accidents occur as a result of negligence and result in material loss. In this case, there is a need for an investigation process to prove that the accident occurred purely due to negligence (Human Error) as evidenced by witness statements and other evidence in the form of crime scene sketches (crime scenes) and picture sketches. If it has been fulfilled, it is necessary to make a standard reference / provision for the conflicting parties so that there is no confusion in making decisions, where the investigator is also required to be a professional investigator by referring to the normative legal principle that the settlement of cases is only at the court table, while the conflicting parties demand to be completed at the investigation stage because they have made peace or not compensation for losses ( *Restorative Junction*).<sup>39</sup>

In this case, it can be clearly seen that the existence of peace, both written and verbal, has no power at all to drop criminal charges. Traffic accident cases are more likely to sentence the perpetrators of traffic accident crimes. While in the penal system, this law does not regulate the existence of peace, whether it must be considered or not in imposing a crime. This is very reasonable because currently the regulation regarding the sentencing guidelines has not been regulated in applicable law

#### **e) Cultural Factors of Community Law**

Cultural factors, namely as the result of work, creation, and taste based on human charities in the association of life. Legal culture basically includes the values that underlie the laws that apply in society, values that are considered good and bad contained in society, these values are conditions that must be harmonious in relations between communities. In society, customary law or customary law of the community lives that uphold family culture. Family culture creates a high sense of brotherhood so that in cases of traffic accidents in the category of minor accidents that occur, the community resolves the case in a familial manner. Sit with both parties in finding solutions to the problems faced due to the traffic accident case.

Another obstacle that comes from the community is an attitude of fear that is too great when dealing with law enforcement officials such as the police. The public tends to avoid in carrying out investigations and investigations of traffic cases that cause material casualties, so many victims do not want to continue the process of examining traffic accident cases that cause material casualties and even try to close the case. Therefore, through an attitude and professional nature of the police as law enforcement officers who are exemplified to the community through a real action in handling cases of traffic accidents that cause material casualties.

The legal culture of society that makes peace between perpetrators and victims of accidents that cause death is actually a form of *restorative justice* in society. But the unfortunate thing is that it was done without the knowledge of Law Enforcement which means that there is evasion of law enforcement. On the other hand, the Police often find it difficult to disclose cases of accidents that result in death due to the lack of community cooperation with the Police.

The public tends to avoid the Police every time there is an accident case, especially for accidents that die, so the Police often face obstacles in disclosing facts and investigating in the field. In fact, there are not a few cases of traffic accidents that are difficult to reveal because there are no witnesses who are willing to disclose the incident of the accident to the Police.

People who are not cooperative in handling traffic accident cases include lack of legal knowledge, so to be a witness in a traffic accident case that causes someone to die also makes the community afraid and reluctant to be witnesses. On the other hand, public social concern for fellow road users has decreased, this is proven by the negligence of drivers, both two-wheeled and four-wheeled vehicles, which ultimately cause traffic accidents and the community's inattention in witnessing traffic accidents.

### 3. Reconstruction of Justice Restoration Policy in the Case of Laka Lantas which resulted in death based on the value of justice

#### a) Legal Factors

Based on Law Number 22 of 2009 concerning Road Traffic and Transportation, a Traffic Accident is an unexpected and accidental Road event involving a Vehicle with or without other Road Users resulting in human casualties and/or property losses. Article 310 of Law No. 22 of 2009: (1) Every person who drives a Motor Vehicle which due to his negligence results in a Traffic Accident with damage to the Vehicle and/or goods as referred to in Article 229 paragraph (2), shall be punished with a maximum imprisonment of 6 (six) months and/or a maximum fine of Rp1,000,000.00 (one million rupiah) (2) Any person who drives a Motor Vehicle which due to his negligence results in a Traffic Accident with the victim minor injuries and damage to vehicles and/or goods as referred to in Article 229 paragraph (3), punishable with a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp2,000,000.00 (two million rupiah). (3) Any person driving a Motor Vehicle whose negligence results in a Traffic Accident with injuries. Severe as referred to in Article 229 paragraph (4), punishable with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp10,000,000.00 (ten million rupiah). (4) In the event of an accident as referred to in paragraph (3) that results in the death of another person, shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp12,000,000.00 (twelve million rupiah).

Article 310 paragraph (1) of Law No. 22 of 2009: Every person who drives a Motor Vehicle which due to his negligence results in a Traffic Accident with damage to Vehicles and/or goods as referred to in Article 229 paragraph (2), shall be punished with a maximum imprisonment of 6 (six) months and/or a maximum fine of Rp1,000,000.00 (one million rupiah).

Traffic accidents occur as a result of negligence and result in material loss. In this case, there is a need for an investigation process to prove that the accident occurred purely due to negligence (Human Error) as evidenced by witness statements and other evidence in the form of crime scene sketches (crime scenes) and picture sketches. If it has been fulfilled, it is necessary to make a standard reference / provision for the conflicting parties so that there is no confusion in making decisions, where the investigator is also required to be a professional investigator by referring to the normative legal principle that the settlement of cases is only at the court table, while the conflicting parties demand to be completed at the investigation stage because they have made peace or not compensation for losses (*Restorative Junction*).

The problem that occurs in resolving traffic accident disputes through the penal route is the lack of public legal knowledge that the peace established between the perpetrator and the victim of the accident who died does not invalidate criminal charges. The public tends to choose and know that the resolution of accident disputes through non-penal channels is more widely used as a form of peace between the parties. Therefore, efforts are needed to increase public legal knowledge in the settlement of compensation in the settlement of accident disputes through the penalty route.

In formal courts, the peace that occurs is entirely within the authority of the judge, meaning that whether or not the peace is taken into consideration in handing down a decision depends on the judge's policy. This is as it is known that the current Criminal Code does not regulate criminal provision (*strafvoemingsleiddrad*), there are only criminal provision rules (*strafvoemingsregel*). Guidelines and rules for granting crimes are very important to be emphasized by the framer of the law so that judges in giving their decisions in their freedom as judges still have limits set objectively, so the framer of the law should provide several criteria for the granting of crimes by judges.

Peace in criminal law in case of traffic accidents often occurs and is applied by the people of Indonesia. Peace often occurs between the driver who crashes with the victim by means of payment of a sum of money or compensation by the impactor to the victim as reimbursement for medical expenses at the hospital or compensation costs for victims who have died. Usually the victim has felt fair while the perpetrator himself sincerely paid the amount of money. Dispute resolution of traffic accidents needs to focus on *restorative justice*. The position of the peace letter between the perpetrator and the victim in the case of traffic accidents often causes controversy in the application of criminal law so that it causes many polemics. The opinion that the legal process must still be carried out and must be enforced indiscriminately (<sup>40</sup>*rule of law and law enforcement*), because "negligence" which includes culpa offense / negligence, namely when driving a vehicle to cause an accident and result in the death of the victim must still be processed legally. On the other hand, the existence of a peace letter shows that both sides have agreed to make peace.

The punishment of the perpetrator of a traffic accident by throwing him in jail does not have a deterrent effect at all, because the perpetrator feels that justice is not on his side. While the traffic accident itself is a disaster that is not at all desired by each party. Meanwhile, there is a significant difference between traffic accidents that do not occur intentionally and actions that intentionally crash their vehicles into other road users.

Although the facts on the ground show that public legal awareness of order is still low because people obey the law, not for safety and concern for the security of fellow road users, but rather fear because of the sanctions that will be obtained when violating. But this does not close that not all parties who commit negligence in the sense of negligence are an element of intentionality, because traffic accidents are also a disaster.

The status of related parties in indirect traffic accident crimes is tried at the formal level in Indonesian positive law which refers to the district court. In fact, it is hoped that the renewal of laws governing Traffic and Road Transport that are restorative in taking action against related parties that cause traffic accidents is compared to enforcement that demands justice as upright as possible without looking at things that are humane and negligible.

#### **b) Law Enforcement Factors**

The problem that occurs in the Implementation of Laws and Regulations Related to the Settlement of Traffic Accident Disputes that cause death to law enforcement factors is the lack of role of Law Enforcement in mediating parties who experience traffic accident disputes, this is due to the peace made between the parties has been carried out without the consent of law enforcement officials. On the other hand, the resolution of Traffic Accident Disputes through the penal route is rarely done because law enforcement officials feel hesitant in implementing it, considering the legal basis and entrance to mediation carried out by the Police is through Discretion. Therefore, efforts are needed in Improving the Knowledge, Abilities, and Skills of Law Enforcement, especially in resolving Traffic Accident Disputes that cause death

#### **c) Facilities and Infrastructure Factors**

Factors of facilities or facilities that support law enforcement. Facilities and infrastructure are needed in carrying out law enforcement, facilities and infrastructure in handling traffic and road transportation cases are needed, namely traffic unit police personnel (Satlantas) who are educated, skilled and professional, Satlantas office as a place to investigate and investigate traffic accident cases, the existence of adequate equipment, namely communication tools and technological tools such as computers and laptops used by the Satlanta police in making accident reports and Case Minutes (BAP)



contained in the Satlantas office, traffic accident data tables contained in the Satlantas room, tables of Laka Lantas investigation mechanisms (traffic accidents), maps of accident-prone areas.

Factors that become obstacles in law enforcement through further efforts are budget factors and infrastructure facilities, law enforcement will run well if all supporting components are available including facilities and facilities that support law enforcement itself, the Police have operational facilities such as four-wheeled and two-wheeled vehicles that are very limited in number, to supervise law enforcement at all times, until now. Likewise, the budget provided to carry out the duties of the Police is very minimal and not in accordance with the broad scope of duties and authority of the police, thus one of the obstacles in the implementation of Police duties is the limited facilities and infrastructure including the operational budget.

#### **d) Factors of Public Legal Awareness**

Legal awareness and legal obedience are two things that determine whether or not the implementation of legislation or the rule of law is effective in society. Legal awareness, legal compliance, and the effectiveness of legislation are three interconnected elements. Often people confuse legal awareness and legal obedience, even though the two are very closely related, but not exactly the same. These two elements determine whether or not the implementation of legislation in society is effective. Low public legal awareness will hinder law enforcement, on the contrary, high legal awareness can help law enforcement in the community.<sup>41</sup>

Legal methods will be effective, if they include phisosophical, juridical and sociological enforcement. The sociological enforceability of a legal norm is strongly influenced by the level of legal awareness of the community, this contains the understanding that no matter how professional law enforcement officers are in carrying out their duties if not accompanied by public legal awareness, it will be difficult to hinder in carrying out their duties.<sup>42</sup>

The lack of public legal awareness in traffic order is still very low, this is because the public lacks legal knowledge that the position of peace does not invalidate the claim of eliminating one's life.

#### **e) Cultural Factors of Community Law**

Culture as a habit carried out by society regarding the treatment of a rule. It can be seen whether or not there is a treatment of rules that are made habitual by the community, either good habits or those that are contrary to the rules. In general, public awareness of the law is high resulting in citizens complying with the provisions of applicable laws and regulations. Conversely, if citizens' awareness of the law is very low, then the degree of compliance with the law is also not high.<sup>43</sup>

The legal culture that occurs in communities that experience traffic accidents is to make peace without involving law enforcement officials including the Police. Even though every related party who is a suspect in a traffic accident whose case continues to court is still tried with the rules in Law Number 22 of 2009 concerning Road Traffic and Transportation. The provision of compensation by related parties to victims of traffic accidents themselves serves as a judge's consideration in deciding the case to be lighter. Traffic accident criminal cases themselves more often use the principle of restorative justice which takes place quickly and flexibly. The punishment of the perpetrator of a traffic accident by throwing him in jail does not have a deterrent effect at all, because the perpetrator feels that justice is not on his side. While the traffic accident itself is a disaster that is not at all desired by each party. Meanwhile, there is a significant difference between traffic accidents that do not occur intentionally and actions that intentionally crash their vehicles into other road users.

## **E. CONCLUSION**

The policy for handling past laka resulting in death is currently not based on the value of justice due to several things including; a) legal factors; the absence of regulation against unintentional negligence that causes traffic accidents; b) Law Enforcement factors; Law Enforcement hesitancy to handle cases due to the uncooperation of perpetrators and witnesses; c) means factors; limited facilities and infrastructure compared to Police Jurisdiction; d) Low public legal awareness of traffic order; e) The legal culture of society; Peacefully traffic accident cases without law enforcement involvement.

Various problems that occur in the implementation of the implementation of restorative justice in the case of laka then resulting in death are currently due to several things including; a) legal factors; the absence of guidelines governing the limits of law enforcement discretion; b) Law Enforcement factors; Law Enforcement has difficulty handling cases due to the uncooperation of perpetrators and witnesses; c) means factors; limited facilities and infrastructure compared to Police Jurisdiction; d) Community legal awareness; ignorance of the public that the position of the peace letter does not invalidate the claim in Court; e) The legal culture of society; The public tends to shy away from Law Enforcement in resolving traffic accident disputes and fear being a witness in the event of an accident that causes someone to die.

Reconstruction of justice restoration policies in cases of past laka resulting in death based on justice values can be carried out in several ways, including; a) legal factors; Creation of guidelines that regulate the limits of discretionary authority of law enforcement; b) Law Enforcement factors; Improve the ability, knowledge, and skills of law enforcement; c) means factors; improve facilities and infrastructure in accordance with Police Jurisdiction; d) Public legal awareness; increase public legal awareness that the position of the peace letter does not invalidate claims in Court; e) The legal culture of society; Fostering a culture of community law that is orderly and cooperative with law enforcement.

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