

# THE ROLE OF THE POLICE IN JASA RAHARJA INSURANCE CLAIMS FOR VICTIMS OF RESTORATIVE TRAFFIC ACCIDENTS

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### Abstract

The role of the police in Jasa Raharja insurance claims for victims of *restorative* traffic accidents. The purpose of this study is to analyze: 1) What is the responsibility of PT Jasa Raharja (Persero) if the victim has a legal relationship with another Insurance Company in the same case? 2) What is the role of the police in claiming Jasa Raharja insurance for victims of restorative traffic accidents?. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The relationship of Other Insurance Companies with PT Jasa Raharja (Persero) in relation to victims and / or heirs of victims will be traced first from, provisions: the basis of the Agreement or engagement, namely Article 1313 of the Civil Code. However, in this connection there is no relationship of cooperation agreement between each insurance company in relation to insurance or coverage regarding the same traffic accident on the road. All insurance companies in Indonesia have their own Articles of Association (AD) and Bylaws (ART). If the Company is private, then they are subject to the provisions of the Meeting of Shareholders as stated in AD / ART. Meanwhile, if this Insurance Company is a State-Owned Enterprise BUMN, in addition to being subject to AD / ART is also subject to the majority shareholder, namely the Government where the executor is the Minister of Finance of the Republic of Indonesia. 2) The police have the authority to produce accident minutes as the basis for insurance claims, where the purpose is to assist victims in the event of insurance claims. Because the purpose of law enforcement carried out by the Police is in the form of returning rights from victims by enforcing the law fairly. This includes providing convenience to the community in solving the problem of traffic accident crimes.

**Keywords:** Role, Police, Claims, Insurance, Jasa Raharja, Victim, Traffic Accident, Restorative.

## INTRODUCTION

### Background

The existence of out-of-court case resolution through *Restorative Justice* or penal mediation is a new dimension studied from theoretical and practical aspects. Examined from the practical dimension, penal mediation will correlate with the achievements of the judicial world. As time goes by where there is an increase in the volume of cases with all forms and variations that enter the court, so that the consequences become a burden on the judiciary, namely legal certainty, expediency and justice. In polarization and penal mediation mechanisms, as long as it is mutually desired by the parties (suspects and victims), and to achieve broader interests, namely the maintenance of social harmonization.<sup>1</sup> However, the concept of *Restorative Justice* is still very difficult to

implement. Because the laws and regulations governing restorative justice only exist in the juvenile justice system, not traffic accident cases, besides the culture of people who always feel themselves the most right and feel their interests are disturbed by the traffic accident cases causes there are still people who are reluctant to solve traffic accident cases with the concept of *Restorative Justice*.<sup>2</sup>

In this regard, on July 27, 2018, the Indonesian National Police issued a Circular Number: SE/8/VII/2018 concerning the Application of *Restorative Justice* in the Settlement of Criminal Cases. The issuance of the circular letter is based on the development of law enforcement systems and methods in Indonesia, showing a tendency to follow the development of community justice, especially the development of the concept of *Restorative Justice* which reflects justice as a form of balance in human life.<sup>3</sup> Therefore, the National Police is required to continue to develop to be more professional and closer to the community. In other words, the National Police is required to develop itself into a civilian police. As a civilian police, the position of the National Police in the state organization has a dominant influence in the implementation of the police proportionally and professionally which is a condition for supporting the realization of *good governance*.<sup>4</sup>

Basically, every citizen must be protected against losses suffered due to these risks by the State. Especially the risks resulting from traffic accidents, which today are increasing. The increase in road accidents is due to economic and technological advances, especially in the field of transportation. Because of the increasingly fierce competition in the economic sector, people forget to pay attention to the risks that will arise later. This is man's ambition and emotion in fighting for his life in the modern world. The government has provided social security through mutual cooperation. Law No. 33 of 1964 concerning the Compulsory Passenger Accident Insurance Fund according to Article 3 paragraph (1) letter a Every legal passenger of a public motor vehicle, train, aircraft, national airline company and ship of the national shipping / shipping company, must pay dues through the entrepreneur / owner concerned to bear losses caused by road traffic accidents.

The manifestation of compulsory contributions in the form of mutual aid is the establishment of funds whose fertilization is carried out by holding compulsory contributions based on Law No. 33 of 1964. Prinsif as per Law No. 34 of 1964 is a community of motor vehicle owners only. Therefore, in its development, the Government through State-Owned Enterprises (BUMN) PT. Jasa Raharja (Persero) as a tool to carry out duties and social responsibilities to cultivate, collect and distribute Jasa Raharja compensation funds as a guarantee of coverage to victims/heirs of victims of road traffic accidents, which today are increasing rapidly.<sup>5</sup>

However, there are obstacles that arise when the victim or the victim's heirs demand the right to Jasa Raharja insurance from the police to PT Jasa Raharja (Persero). The obstacles he found in the community were quite varied, so it seemed very difficult to get his right to raharja service compensation increasingly symptomatic. Not all victims/heirs of victims of road accidents can receive their rights in the form of raharja service compensation. The Regional Traffic Unit Police as servants and presenters of

administrative requirements for raharja services compensation are also still found irrational obstacles and seem to make it difficult for victims or heirs of victims.

### **Problem Statement**

1. What is the responsibility of PT Jasa Raharja (Persero) if the victim has a legal relationship with another Insurance Company in the same case?
2. What is the role of the police in claiming insurance for *restorative traffic accident victims*?

### **Theoretical Framework**

In general, the definition of *Restorative Justice* is a restoration of relationships and redemption of wrongs that the perpetrator of the crime wants to do to the victim of the crime outside the court with the aim and purpose that legal problems arising from the occurrence of the criminal act can be resolved properly by reaching agreement and agreement between the parties.

Liebmann simply defines *Restorative Justice* as a legal system that "aims to restore the well-being of victims, perpetrators and communities damaged by crime, and to prevent further violations or acts of crime."<sup>6</sup>

The main goal of restorative justice is the creation of a fair trial. In addition, it is expected that the parties, both perpetrators, victims, and the community play a major role in it. Victims are expected to obtain appropriate compensation and mutually agreed upon with the perpetrator to compensate for losses and reduce the suffering experienced. In *Restorative Justice*, the perpetrator must take full responsibility so that it is expected that the perpetrator can realize his mistake. Through *Restorative Justice*, the law can also be enforced fairly.

Lawrence M. Friedman emphasized that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the structure of law, substance of the law and legal culture. The legal structure concerns law enforcement officials, the substance of the law includes legislation and legal culture is a living law adopted in a society.

The structure of a legal system consists of the following elements, the number and size of courts, their jurisdiction (including the types of cases they are authorized to examine), and the procedure for appeals from court to court. Structure also means how the legislature is organized, what the president can and cannot do, there are procedures followed by the police and so on. So the structure (legal structure) consists of existing legal institutions intended to run the existing legal apparatus. Structure is a pattern that shows how a law is executed according to its formal provisions. This structure shows how courts, law makers and legal bodies and processes run and are run.<sup>7</sup>

Another aspect of the legal system is its substance. What is meant by substance is the rules, norms, and patterns of real human behavior that reside in that system. So the substance of the law concerns applicable laws and regulations that have binding force and become guidelines for law enforcement officials.

Legal culture concerns legal culture which is the attitude of humans (including the legal culture of law enforcement officials) towards the law and the legal system. No matter how good the arrangement of the legal structure to carry out the established rule of law and no matter how good the quality of the legal substance is made without the support of legal culture by the people involved in the system and society, law enforcement will not run effectively. Law as a tool to change society or social engineering is nothing but the ideas that the law seeks to realize. To ensure the achievement of the function of law as an engineering society for the better, it is not only necessary to provide law in the sense of rules or regulations, but also the guarantee of the realization of these legal rules into legal practice, or in other words, guarantees of good law enforcement. So the working of the law is not only a function of legislation, but rather the activity of the implementing bureaucracy.<sup>8</sup>

## RESEARCH METHODOLOGY

In the research method used, this is normative legal/juridical research.<sup>9</sup> Normative juridical research refers to legal norms contained in laws and regulations and legal norms that exist in society. In addition, by seeing the synchronization of a rule with other rules in a hierarchical manner.<sup>10</sup> Law that applies at a certain time and place, that is, a written rules and norms officially established and promulgated by the ruler, in addition to written laws that effectively regulate the behavior of members of society,<sup>11</sup>

In this study, a statutory approach and a comparative approach were used.<sup>12</sup> Legal research conducted by examining library materials or secondary data.<sup>13</sup> Statute approach: an approach taken by examining laws and regulations related to the focus of research. Then, the data collection taken in this study uses literature studies, namely data collection by searching, examining and reviewing secondary data.<sup>14</sup> In this research, document studies will be carried out as a means of collecting data related to the problems raised, namely literature studies / document studies (documentary study), sourced from laws and regulations, books, official documents, publications and research results.<sup>15</sup>

## RESEARCH RESULTS

### **Corporate responsibility of PT Jasa Raharja (Persero) if the victim has a legal relationship with another insurance company in the same case**

Basically, every citizen should be protected against losses suffered due to such dangers. It's just that apparently the government also realizes that such protection is not a light burden, especially when it is thought that the economic and financial situation of our country has not allowed it so that it does not allow the Government to accommodate all the consequences of accidents suffered by ordinary people. To overcome this situation,

it is necessary to hold mutual aid work.<sup>16</sup> This method is done by collecting mandatory dues and donations from groups of people who are considered capable. The responsibility of PT Jasa Raharja (Persero) is to fertilize funds from the public, users of public transportation facilities, and entrepreneurs / vehicle owners which can then be inventoried.<sup>17</sup>

Road accidents are generally covered by social insurance, for private vehicle owners social insurance payments are withdrawn when STNK renewal is automatically added while for public transport users insurance contributions are billed in travel tickets. Insurance in general, is based on the agreement and agreement between the insured and the insurer based on trust between the insured and the insurer. The Insurer believes that the Insured will provide true information about the nature of the insurance, the Insured believes that the Insurer will provide appropriate compensation if it suffers a loss so that this insurance must be carried out on the basis of good faith between the two parties. The agreement between the two parties that is desired consists of the subject of personal law or civil law.<sup>18</sup>

Insurance in the Insurance Law is an agreement between two or more parties, by which the insurer binds itself to the insured, by receiving an insurance premium, to provide reimbursement to the insured for loss, damage or loss of expected profits or third party legal liability that may be suffered by the insured, arising from an uncertain event, or provide a payment based on the death or life of an insured person.<sup>19</sup>

The insured party is the person interested in entering into an insurance agreement as the party who is obliged to pay premiums to the insurer, all at once or in stages. With the aim of getting compensation for a loss that he might suffer as a result of an event that originally certainly occurred. The insured can have the status of an individual, partnership or legal entity and must be an interested party to the insured object.<sup>20</sup>

Insurance claim itself is a process of someone in this case the Policyholder to submit a formal request to the insurance company, to request payment of insurance benefits based on the terms of the agreement contained in the insurance policy they have. Or it can be said that if we apply for insurance and are approved by the company, it means we already have an insurance policy. So if there is a risk to ourselves, then we have the right to submit a risk replacement claim to the company.<sup>21</sup>

Law Number 34 of 1964 provides a framework for the management of compulsory road traffic accident insurance funds, including the arrangement of insurance compensation for victims and heirs of victims who died. The public participates in this social insurance scheme through compulsory contributions mandated by law, both through duties collected from general passengers and dues from motor vehicle owners.<sup>22</sup>

The implementation of Road Traffic Accident Insurance compensation carried out by PT. Jasa Raharja (Persero) for victims of road traffic accidents is carried out if all files or documents have been completed by the victim or the victim's heirs as the party applying for insurance compensation. after the file is complete and submitted to PT. Jasa Raharja



(Persero), then the compensation funds will be transferred to the BRI savings account of the victim or heir. Submission of the claim is free / free of charge.<sup>23</sup>

The relationship between Other Insurance Companies and PT Jasa Raharja (Persero) in relation to victims and / or heirs of victims will be traced first from, provisions: the basis of the Agreement or engagement, namely Article 1313 of the Civil Code. However, in this connection there is no relationship of cooperation agreement between each insurance company in relation to insurance or coverage regarding the same traffic accident on the road. All insurance companies in Indonesia have their own Articles of Association (AD) and Bylaws (ART). If the Company is private, then they are subject to the provisions of the Meeting of Shareholders as stated in AD / ART. Meanwhile, if this Insurance Company is a State-Owned Enterprise BUMN, in addition to being subject to AD / ART is also subject to the majority shareholder, namely the Government where the executor is the Minister of Finance of the Republic of Indonesia.

Thus, PT Jasa Raharja (Persero) remains as a State Company or State-Owned Enterprise engaged in insurance. However, if there are victims who have legal relations with other insurance, then the way to solve it is in the way as described above, namely with requirements that are quite difficult for victims / heirs of victims who experience road accidents, because the conditions requested by the two insurance symbols must include the original receipt from the doctor or hospital, while the doctor and hospital only provide one original receipt. The requirements determined by both PT Jasa Raharja (Persero) or other insurance, both state-owned and private, also deserve to be suspected as insurance politics, so that the victim/heirs of the victim do not take care of insurance compensation as their right.<sup>24</sup> However, in the event that the victim has a legal relationship with more than 2 (two) insurance guarantees and is correlated with the provisions of the health institution that only issues 1 (one) type of original receipt, the health institution can make a copy of the original receipt and legalize the receipt according to the amount needed in this case the number of insurance relationships between the victim and other insurance companies.<sup>25</sup>

The affirmation in Law Number 33 and Law Number 34 of 1964 which states that the insured party in accident insurance which is a product of Jasa Raharja insurance is one of the characteristics of legal relations that are not included in the scope of the agreement, but legal relationships based on law. The nature of the agreement is only binding on the parties to the agreement. The insurer will only provide coverage to the insured party if the insured party has made premium payments which are one of its obligations. Premium collection in Jasa Raharja insurance is not based on an agreement between the two parties but has been regulated in laws and regulations. This is the distinguishing characteristic between Jasa Raharja insurance as compulsory social insurance with other insurance whose legal relationship between the parties is regulated in the insurance policy.<sup>26</sup>

## **The Role of the Police in Jasa Raharja Insurance Claims for *Restorative Traffic Accident Victims***

Article 1 Number 5 of the Police Law states that public security and order is a dynamic condition of society as one of the prerequisites for the implementation of the national development process in order to achieve national goals characterized by guaranteed security, order, and law enforcement, as well as the building of peace, which contains the ability to build and develop the potential and strength of the community in deterring, preventing, and overcoming all forms of law violations and other forms of disorder that can unsettle society. Therefore, the presence of this police force is expected to provide protection to the community in accordance with its function. Article 2 of the Police Law states that the police function is one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, protection, and service to the community. So it can be explained that the Police play an important role in providing protection to the community and defending the rights of victims of crime.<sup>27</sup>

Traffic accidents themselves are events that result in casualties, so in the process of handling it is very necessary the role of the police as officers specially appointed by law to regulate traffic in Indonesia. The process of handling traffic accidents itself has its own mechanism from criminal acts in general, this is due to the element of inadvertence so that the traffic accident occurs. That the presence of the police here aims to provide or bridge the resolution of traffic accident problems. In this case, the police will make minutes about the incident, by processing the scene of the crime, in order to find the cause and effect of the accident. Such is the case in the case of a fatal accident caused by the son of a celebrity, where when driving a four-wheeled vehicle, the suspect was not old enough to get a driver's license. So that for his negligence there was an accident that killed more than one person, where in the process of processing the crime scene the Police found the fact that the person concerned was not old enough and in the process of solving it could be done by restorative justice or diversion considering that the perpetrator was classified as a minor.<sup>28</sup>

Accident victims themselves are people who experience losses and suffers, of course, have the right to claim various compensations both materially and materially as mentioned in the LLJA Law, namely:

Article 240 of the LLJA Law states that Traffic Accident Victims are entitled to:

- a. assistance and care from the party responsible for the occurrence of Traffic Accidents and/or the Government;
- b. compensation from the party responsible for the occurrence of Traffic Accidents; and
- c. Traffic Accident compensation from insurance companies and Article 241 of the LLJA Law states that every victim of Traffic Accidents has the right to get priority first aid and treatment at the nearest hospital in accordance with the provisions of laws and regulations.

Referring to the role of the Police as a government officer in carrying out traffic comfort, of course, this is what was proclaimed to the Chief of Police in the region. The police provide services to the community in terms of mediating parties involved in traffic accidents. That this peace itself is implemented in the Police station in order to provide equal rights from every accident victim and the perpetrator of the accident. This settlement is also held based on kinship or *restorative justice*, which is based on the amount of loss caused by the accident.<sup>29</sup>

The police have the authority to make accident minutes as the basis for insurance claims, where the purpose is to assist victims in terms of insurance claims. Because the purpose of law enforcement carried out by the Police is in the form of returning rights from victims by enforcing the law fairly. This includes providing convenience to the community in solving the problem of traffic accident crimes.

The handling and enforcement of this law itself must be in line with the orders of the Traffic Law, because in accordance with the articles in it everyone who commits a criminal accident must first be examined. So in this case the Police will handle based on reports and complaints from the public on the criminal event. The police conducted a series of examination of witnesses, crime scenes, evidence, and made minutes. The police also always make traffic accident news to victims in advance for use in Jasaraharja insurance claims, which will later be used as medical claims or hospital treatment.<sup>30</sup>

## CONCLUSION

The results showed that;

1. The relationship between Other Insurance Companies and PT Jasa Raharja (Persero) in relation to victims and / or heirs of victims will be traced first from, provisions: the basis of the Agreement or engagement, namely Article 1313 of the Civil Code. However, in this connection there is no relationship of cooperation agreement between each insurance company in relation to insurance or coverage regarding the same traffic accident on the road. All insurance companies in Indonesia have their own Articles of Association (AD) and Bylaws (ART). If the Company is private, then they are subject to the provisions of the Meeting of Shareholders as stated in AD / ART. Meanwhile, if this Insurance Company is a State-Owned Enterprise BUMN, in addition to being subject to AD / ART is also subject to the majority shareholder, namely the Government where the executor is the Minister of Finance of the Republic of Indonesia.
2. The police have the authority to make accident minutes as the basis for insurance claims, where the purpose is to assist victims in terms of insurance claims. Because the purpose of law enforcement carried out by the Police is in the form of returning rights from victims by enforcing the law fairly. This includes providing convenience to the community in solving the problem of traffic accident crimes.



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