Alternative dispute resolution in traffic accidents in North Sumatera highway

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Abstract. Every person who commits an unlawful act that results in a loss to another party or another person should be punished by law and provide compensation for the loss it has caused. Although the unlawful act is classified into the realm of criminal law, the resolution may also be done using legal provisions contained in civil law, based on the provisions of Article 1365 of the Civil Code of Republic of Indonesia. Alternative Dispute Settlement in the form of compensation for traffic accidents can be carried-out provided the victim does not experience serious injuries or death. The Indonesian police forces, in general, only facilitate both parties in resolving accident cases. Furthermore, if the case reaches the court level, then the outcome of the peace agreement can still be considered by the presiding judge before he or she delivers a permanent legal decision. In this research, it is shown the effectiveness of alternative dispute resolution in traffic accidents to help law enforcement officers to overcome the backlog in processing cases due to the limitation of resources in the police department especially in the jurisdiction of Sumatera Utara Province.

1. Introduction
National transportation systems have a very strategic role in supporting development of public welfare as mandated by the Constitution of the Republic of Indonesia 1945. Road traffic and transportation must be developed to their full potential to support economic development and regional development. Furthermore, traffic complexity is one of the most vexing city problems and involves numerous factors to be solved in order to improve quality of life of any city. Therefore, in recognizing the importance of transportation, roads and highways must be regulated and developed up to the national level in order to realize transportation services that are safe and reliable in the country.

In order to organize the complexity occur in road traffic and transportation in Indonesia, the Law No. 14 of 1992 has been replaced by Law No. 22 of 2009 [1]. The current law regulates more details and complete information on traffic and road transport arrangements in Indonesia. Article 1 paragraph (24) in the law states that “A traffic accident is an event on an unexpected and accidental road involving a vehicle with or without another road user resulting in human casualties and/or property losses”. In this article, victims of traffic accidents can be in the form of minor injuries, serious injuries and deaths calculated at the latest 30 (thirty) days after the accident occurred.

The theory used as the analysis in this study are the theory of the rule of law (grand theory), whereas the state takes over responsibility for maintaining predetermined regulations which are no longer left to individuals [2]. The state in this case bears the task of investigating and demanding violations of regulations containing criminal threats. In this context, the state is present to prevent the occurrence of “vigilante” actions. However, at present this thought is precisely confronted with the reality of the community’s need for a criminal case settlement mechanism that is considered to better accommodate the participation and aspirations of victims and perpetrators.
Therefore, in relation with the theory, the law provides an opportunity for police force to facilitate peace efforts outside the court as stated in Article 236 paragraph (2): "The obligation to compensate as referred to in paragraph (1) in Traffic Accidents as referred to in Article 229 paragraph (2) can be carried out outside the court if there is a peace agreement between the parties involved". However, there are still problems in the implementation, especially regarding finding effective solutions in traffic accidents disputes that have not yet obtained clear and explicit solutions within the law. Therefore this research focuses on the implementation of alternative dispute resolution to compensate the traffic accidents resulting in material casualties in the jurisdiction of Sumatera Utara Province.

2. Traffic accidents cases in North Sumatera jurisdiction
Traffic accidents usually occur mostly due to disobedience of road users to traffic rules and regulations. The lack of legal awareness of motorists is the starting point for an accident. The increasing mobility of motorized vehicles is very influential in increasing number of accidents on the highway, which result in injuries, deaths and other damages. Property losses due to traffic accidents can be in the amounts of hundreds of millions rupiahs. This is because the accident caused damage to road facilities and infrastructures as well as collided vehicles. According to Soerjono Soekanto damage is: "any partial or total damage resulting in no longer being able to change its form or does not function in parts or equipment as it should" [3]. In addition, traffic accidents can result in lifelong disabilities, such as the loss of one limb or not being able to function one of the limbs, blindness and etc. The following is a table about the number of traffic accidents in 2016 and 2017 recorded in the jurisdiction of North Sumatra Police.

| NO | REGION             | NUMBER OF CASES 2017 | NUMBER OF CASES 2016 |
|----|--------------------|----------------------|----------------------|
| 1  | MEDAN              | 1,081                | 1,574                |
| 2  | DELI SERDANG      | 432                  | 485                  |
| 3  | TEBING TINGGI     | 237                  | 285                  |
| 4  | LANGKAT           | 360                  | 358                  |
| 5  | BINJAI             | 163                  | 186                  |
| 6  | TANAH KARO        | 154                  | 192                  |
| 7  | SIMALUNGGUN       | 245                  | 252                  |
| 8  | ASAHAN             | 377                  | 453                  |
| 9  | LABUHAN BATU      | 229                  | 272                  |
| 10 | TAPANULI UTARA    | 126                  | 134                  |
| 11 | DAIIRI             | 104                  | 105                  |
| 12 | TAPANULI SELATAN  | 165                  | 188                  |
| 13 | MADINA             | 67                   | 93                   |
| 14 | TAPANULI TENGAH   | 115                  | 107                  |
| 15 | NIAS               | 100                  | 107                  |
| 16 | PELABUHAN BELAWAN | 262                  | 263                  |
| 17 | SERGAI            | 240                  | 297                  |
| 18 | TANJUNG BALAI     | 34                   | 43                   |
| 19 | PEMATANG SIANTR   | 244                  | 264                  |
| 20 | SIBOLGA           | 28                   | 32                   |
| 21 | PADANG SIDEMPUAN  | 67                   | 58                   |
| 22 | TOBASA            | 86                   | 92                   |
The above data in the North Sumatera Police jurisdiction amounted to 6,276 cases of traffic accidents in 2016 and decreased to 5,308 cases in 2017.

**Table 2.** Casualties and Material Losses on all Traffic Accident Cases in the Jurisdiction of North Sumatra Regional Police 2016 – 2017

| NO | REGION      | DEATH | SERIOUSLY INJURED | LIGHTLY INJURED | MATERIAL (Rupiahs) |
|----|-------------|-------|-------------------|-----------------|-------------------|
| 1  | MEDAN       | 213   | 832               | 1,04            | 1,580,115,000     |
| 2  | DELI SERDANG | 132   | 7                | 698             | 345,620,000       |
| 3  | TEBING TINGGI | 57    | 54               | 458             | 464,800,000       |
| 4  | LANGKAT     | 68    | 221              | 402             | 1,252,100,000     |
| 5  | BINJAI      | 75    | 34               | 242             | 178,250,000       |
| 6  | TANAH KARO  | 62    | 129              | 198             | 1,330,000,000     |
| 7  | SIMALUNGUN  | 115   | 55               | 290             | 1,397,500,000     |
| 8  | ASAHAN      | 139   | 163              | 548             | 1,021,050,000     |
| 9  | LABUHAN BATU | 172   | 175              | 255             | 1,069,500,000     |
| 10 | TAPANULI UTARA | 38    | 105              | 152             | 766,800,000       |
| 11 | DAIRO       | 28    | 70               | 114             | 203,700,000       |
| 12 | TAPANULI SELATAN | 117  | 114              | 164             | 731,400,000       |
| 13 | MADINA      | 63    | 23               | 133             | 225,400,000       |
| 14 | TAPANULI TENGAH | 32   | 42               | 144             | 160,200,000       |
| 15 | NIAS        | 42    | 59               | 140             | 163,150,000       |
|   | PELABUHAN   |       |                  |                 |                   |
| 16 | BELAWAN     | 86    | 4                | 240             | 371,110,000       |
| 17 | SERGAI      | 81    | 48               | 490             | 897,000,000       |
| 18 | TANJUNG BALAI | 13   | 6                | 61              | 26,050,000        |
| 19 | PEMATANG SIANTAR | 32  | 94               | 346             | 819,850,000       |
| 20 | SIBOLGA     | 9     | 7                | 29              | 73,100,000        |
| 21 | PADANG SIDEMPUAN | 14  | 38               | 42              | 416,050,000       |
| 22 | TOBASA      | 27    | 64               | 95              | 388,300,000       |
| 23 | HUMBAHAS    | 16    | 19               | 20              | 54,200,000        |
| 24 | SAMOSIR     | 14    | 12               | 40              | 55,800,000        |
| 25 | PAKPAK BARAT | 1     | 13               | 12              | 123,000,000       |
| 26 | NIAS SELATAN| 12    | 14               | 31              | 23,000,000        |
| 27 | BATU BARA   | 107   | 191              | 415             | 362,135,000       |
|    | TOTAL       | 1,765 | 2,593            | 6,802           | 14,499,180,000    |
The research method used in this study is the normative legal research method [4]. In normative legal research, library materials are basic data in (science) research classified as secondary data. The

| NO | REGION             | DEATH | SERIOUSLY INJURED | LIGHTLY INJURED | MATERIAL (Rupiahs) |
|----|--------------------|-------|-------------------|-----------------|-------------------|
| 1  | MEDAN              | 195   | 559               | 712             | 1,571,420,000     |
| 2  | DELI SERDANG      | 134   | 17                | 578             | 221,600,000       |
| 3  | TEBING TINGGI     | 50    | 20                | 322             | 281,600,000       |
| 4  | LANGKAT           | 70    | 233               | 369             | 1,200,250,000     |
| 5  | BINJAI            | 53    | 34                | 193             | 531,450,000       |
| 6  | TANAH KARO        | 67    | 57                | 229             | 736,750,000       |
| 7  | SIMALUNGUN        | 70    | 64                | 250             | 973,150,000       |
| 8  | ASAHAN            | 114   | 90                | 550             | 722,650,000       |
| 9  | LABUHAN BATU      | 161   | 123               | 188             | 856,700,000       |
| 10 | TAPANULI UTARA    | 35    | 82                | 121             | 761,100,000       |
| 11 | DAIIRI            | 44    | 54                | 91              | 130,400,000       |
| 12 | TAPANULI SELATAN  | 89    | 59                | 194             | 823,550,000       |
| 13 | MADINA            | 46    | 17                | 63              | 97,150,000        |
| 14 | TAPANULI TENGAH   | 42    | 11                | 148             | 146,100,000       |
| 15 | NIAS              | 33    | 38                | 165             | 221,450,000       |
| 16 | PELABUHAN         | 119   | 123               | 223             | 442,950,000       |
| 17 | SERGAI            | 72    | 79                | 335             | 550,600,000       |
| 18 | TANJUNG BALAI     | 10    | 3                 | 39              | 18,500,000        |
| 19 | PEMATANG SIANTAR  | 33    | 57                | 364             | 467,785,000       |
| 20 | SIBOLGA           | 4     | 7                 | 42              | 38,850,000        |
| 21 | PADANG SIDEMPUAN  | 20    | 41                | 45              | 128,800,000       |
| 22 | TOBASA            | 23    | 45                | 75              | 319,500,000       |
| 23 | HUMBAHAS          | 18    | 9                 | 45              | 43,000,000        |
| 24 | SAMOSIR           | 22    | 9                 | 53              | 61,000,000        |
| 25 | PAKPAK BARAT      | 9     | 2                 | 30              | 131,200,000       |
| 26 | NIAS SELATAN      | 7     | 16                | 51              | 49,400,000        |
| 27 | BATU BARA         | 86    | 142               | 316             | 296,715,000       |

**TOTAL** | 1,591 | 1,881 | 5,791 | 11,823,620,000

Source: Directorate of Traffic of the Republic of Indonesia National Police Law Region of North Sumatra
secondary data has a very broad scope, so that it includes personal letters, diaries, books, to official documents issued by the Government. General characteristics of the secondary data are generally in a state of ready-made (secondary) form and content of secondary data has been formed and filled by previous researchers, secondary data can be obtained without being bound or limited by time and place.

3. The basis of alternative dispute resolution in traffic accidents
Traffic accident cases result in material casualties in one party, requires the other party to be held responsible for the losses caused by the act [5] – [7]. Article 1365 of the Civil Code states that, "Any act against the law which makes a loss to another person, requires the person compensates for the loss". From the provisions of Article 1365 of the Civil Code mentioned above, it can be seen that each person who commits an unlawful act that results in a loss to another party or to another person is obliged to compensate for the loss due to the mistake that caused the loss. Even though the unlawful act is classified into the realm of criminal law, the resolution can be done by using legal provisions contained in civil law, namely by using the provisions of Article 1365 of the Civil Code. If the loss is caused due to the actions of several people, then each person responsible for the occurrence of these actions can be prosecuted for the whole. There must be losses incurred. In the sense that losses caused by acts against the law can be in the form of: Material losses, where material losses can consist of actual losses suffered and benefits that should be obtained. So it is generally accepted that the creator of an unlawful act must replace the loss not only for the actual loss suffered, but also the benefits that should be obtained.

The aggrieved party has the right to claim compensation not only for the loss he has suffered when the claim is made but also what he will suffer in the future. There is a causal relationship between action and loss. To solve the causal relationship between lawlessness and loss, there are two theories, namely: Condition sine qua non, where according to this theory a person who acts against the law is always responsible if the condition of sine qua non causes harm (which is considered as a cause change is all the conditions that must exist for the emergence of consequences).

In the case of prosecution of compensation based on Article 1365 of the Civil Code relating to the settlement of compensation for traffic accidents resulting in material casualties can be carried out through non-litigation channels [8]. The purpose of the non-litigation path is that the process of settlement of compensation in the case of a traffic accident which results in the material victim being not taken through a court institution that is in the civil procedural legal system applicable in Indonesia. The solution to the problem of compensation is known as Alternative Dispute Resolution by using an arbitration institution that specifically handles the settlement of compensation issues in cases of traffic accidents that result in the material victim. This solution is intended to handling the problems more effectively in terms of time and efficiently in term of costs that incurred in the case.

4. The alternative dispute resolution as the main solution
Material losses incurred as a result of traffic accidents that cause material losses are more likely to result in a settlement of peace between the parties who have experienced such traffic accidents and tend not to be processed legally. This might lead to a sense of injustice for those who experience greater material losses in traffic accidents and this is a dilemma for law enforcement against the provisions of Article 310 paragraph (1) of Law Number 22 Year 2009 concerning traffic and road transport.

Based on National Police Regulation No. 15 of 2013 concerning the Procedure for Handling Traffic Accidents [9] stated in Article 36: (1) The handling of minor traffic accidents that have sufficient evidence or fulfilment of elements of criminal offenses is carried out by a brief inspection process, (2) A brief inspection process on a light traffic accident, if a peace agreement occurs between the parties involved can be resolved outside the court.

Settlement of traffic accident cases is also regulated in the Chief of Police Regulation No. 15 of 2013, namely by giving compensation, namely Article 61 stated: (1) Determination and payment of compensation for Material Losses caused by Traffic accidents can be settled through a process outside the court, (2) Settlement of the determination and payment of compensation for Material Losses as referred to in paragraph (1) shall be carried out by direct consultation between the parties involved in
Traffic Accidents and (3) Material compensation settlement processes are prohibited from involving auxiliary investigators / investigators.

National Police Regulation No. 15 of 2013, namely by giving compensation namely Article 62 stated that: (1) The parties may request the assistance of a third party as a mediator if the settlement as referred to in Article 57 paragraph (2) does not reach an agreement, (2) In the event of an agreement between the parties involved, it shall be stated in a statement letter and submitted to the supporting investigator / investigator, (3) Investigators after receiving a statement letter attached to the case file as a consideration for the judge in making a decision.

Article 63 Regulation of the Chief of the National Police No. 15 of 2013 explains that: (1) The obligation to compensate for a peace agreement between the parties involved in a traffic accident, to settle the case can be resolved outside the court session, (2) A peace agreement between the parties involved in a traffic accident is stated in a statement of peace agreement, (3) Settlement of cases outside the court session as referred to in paragraph (2) may be carried out as long as the police report has not been made, (4) In cases of minor traffic accidents, if the elements of a criminal act are fulfilled and there is no peace agreement between the parties involved in a traffic accident, then the settlement of the case is resolved by a brief event, (5) Settlement of cases outside the court session as referred to in paragraph (2) must be registered and a statement of peace agreement filed.

Article 64 Regulation of the Chief of the National Police No. 15 of 2013 explains that: In cases of moderate traffic accidents, if the elements of a criminal offense are fulfilled, the settlement of the case is resolved by a brief event. Furthermore the Article 65 of the Regulation of the Chief of the National Police No. 15 of 2013 explains that in heavy traffic accidents, if the elements of a criminal offense are fulfilled, the settlement of the case is settled by an ordinary event. Based on the above explanation it can be defined that the settlement of traffic accidents can be resolved outside the court as regulated in Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia which regulates further by the discretion of the police, Letter No. Pol: B/3022/XII/2009/SDEOPS dated 14 December 2009 concerning Alternative Dispute Resolution, and Regulation of the Chief of the National Police No. 15 of 2013 concerning Procedures for Handling Traffic Accidents.

Based on data of the traffic accidents in North Sumatra, it was found that during January to December 2016 there were 6,276 cases of traffic accidents, but there were only 196 cases that were delegated to the Public Prosecutor. Whereas there were 15 cases of traffic accidents resolved outside the court or through the Alternative Dispute Resolution processes and 3,029 cases terminated. Looking on the number of cases that are terminated due to various reasons therefore Alternative Dispute Resolution need to be utilized further especially in the cases that only involve material losses.

5. Conclusions
Alternative Disputes Resolution Compensation in traffic accidents need to be carried out and strengthened further due to high number of unsettled cases based on data in 2016 and 2017. The police in general only facilitate both parties in resolving accident cases. If one case reaches the court level, the results of the peace settlement over a traffic accident still has a chance to be considered by the presiding judge. The opportunity is given to the related parties. It is expected that the results of the Alternative Dispute Resolution set forth in the form of peace agreement between the parties can be a consideration to eliminate criminal penalties or to relieve punishment for the perpetrator.

References
[1] Law of the Republic of Indonesia Number 22 of 2009 on Road Traffic and Transportation
[2] Sudikno Mertokusumo 1999 Understanding The Law: An Introduction. Yogyakarta: Liberty
[3] Soerjono Soekanto 2011 Factors Affecting Law Enforcement, University of Indonesia and Indonesian Center for Environmental Law, Design of Alternative Dispute Resolution Teaching Materials (APS) Jakarta
[4] Soerjono Soekanto Sri Mamudji 2003 Normative Legal Research A Short Review Jakarta Raja Grafindo Persada
[5] Aldian 2009 *Traffic Accident Characteristics Analysis* Petra Christian University Surabaya
[6] Deni Dinata 2007 *Acts against the Law and Compensation in Civil and Criminal Law* Selekta Jakarta
[7] Gunawan Herlambang 2009 *Alternative Compensation Dispute Resolution for Mild Crimes* Science Partners Surabaya
[8] Suhermanto Hardono 2009 *Acts against the Law and Compensation According to Civil Law* Eresco Bandung
[9] 2013 *The Regulation of the Head of the Indonesian National Police Number 15 of 2013 concerning Procedures for Handling Traffic Accidents*, State Gazette of the Republic of Indonesia Number 152