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VOLUME 4 ISSUE 1, JANUARY-Juny 2026
ISSN (Print): xxxx-xxxx ISSN (Online): xxxx-xxxx

**History of Article**
Submitted: Februari 2026
Revised: Maret 2026
Accepted: April 2026

# Legal Analysis of the Implementation of Restorative Justice in Traffic Accident Cases at the Makassar City Resort Police

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## ABSTRACT

This study aims to determine the implementation and inhibiting factors of restorative justice in resolving traffic accidents at the Makassar City Police. This research is an empirical normative legal research with an approach carried out at the Makassar City Police Resort, especially in the Traffic Unit Accident Unit. The method used is interview, observation and documentation.

Research Results The implementation of restortative justice in the settlement of traffic accidents at the Makassar City Police Resort has not run optimally based on the Indonesian National Police Regulation No. 8 of 2021 concerning the Handling of Crimes based on Restorative Justice by relying on two conditions, namely formal requirements and material requirements. The two conditions include the absence of peace between the two parties which is a formal requirement so that the material requirements are not fulfilled to fulfill the agreement. The factors that include the police, especially Makassar Police

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Investigators in investigating traffic violations that cause traffic accidents in the Makassar Polrestabes area consist of two factors, namely internal factors (a) facilities and infrastructure and (a) legal and external factors (a) awareness and (b) culture.

***Keywords**: Restorative Justice, Traffic Accident, Compensation.*

# INTRODUCTION

Every citizen is subject and obedient to the law as a consequence of a sovereign state that possesses binding legal norms to regulate the life of the nation and the state. This principle is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "Indonesia is a state based on law." Its implication is that Indonesia is a rechtsstaat, a state founded upon the rule of law, not merely on power (machtsstaat). As a state governed by law, Indonesia adopts law as an ideology to create order, security, justice, and welfare for its citizens. Consequently, the law binds every action taken by Indonesian citizens.

Referring to the normative foundation above, a legal instrument is needed to regulate the lives of citizens, particularly in the field of transportation, to reduce victims of traffic accidents. This legal instrument, through Law No. 22 of 2009 concerning Road Traffic and Transportation, defines a traffic accident as an unexpected and unintended event occurring on a public road that results in human casualties or material losses.

More specifically, Article 93 of Government Regulation No. 43 of 1993 stipulates that a traffic accident is an unexpected and unintended event on the road involving a moving vehicle, with or without other road users, which results in human casualties and material damages.

Traffic accidents give rise to criminal liability for the perpetrator or the party causing the incident, and they may also be accompanied by civil claims for material losses. In community practice, settlements often occur based on mutual agreement through compensation or financial assistance given to the victim.

Such practices are reported in online media, for example through medcom with the headline: "Hit-and-Run Case Involving Social Service Rescue Car in Makassar Ends in Settlement." A similar settlement occurred in the case involving "the Duren Sawit cowboy," Muhammad Farid Andika, where the case ended peacefully after the victim withdrew the police report. Another example is the traffic accident between Mukhlas and Aditya at Butung Market, which also ended in a peaceful settlement witnessed by both parties' families, who agreed not to pursue the matter legally.

The resolution of traffic accident cases as described above indicates a tendency to use conventional settlement models. Therefore, a model that creates

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fairness and balance for both offenders and victims is needed. The restorative justice approach places greater emphasis on achieving fairness and balance for both parties. In this model, the criminal justice process—traditionally focused on punishment—is transformed into dialogue and mediation aimed at producing a mutually agreed settlement that is more just and balanced for both victim and offender.

Mustawa asserts that law is created to provide benefits for individuals and the community; in other words, law is assumed as a set of principles and norms governing relations among people in society. An objective rational measure of legal utility is reflected when the law succeeds in creating a safe, orderly, and peaceful society (Mustawa, 2021).

In the context of criminal investigation using restorative justice, the police are the gatekeepers of the criminal justice system. According to Donald Black, their role as investigators places them in direct contact with the majority of ordinary or common crimes (H.M. Nurhasan & Endang Wahyu Ningsih, 2017).
Reflecting these practices and thoughts, the Indonesian National Police issued a legal instrument as a basis for resolving criminal cases outside the court through alternative dispute resolution by means of settlement. This is regulated in the Chief of Police Circular Letter No. SE/8/VII/2018 dated 27 July 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. This Circular Letter may serve as a legal umbrella for resolving criminal cases, particularly traffic violations, considering the continuous increase in traffic-related offenses.

Traffic violations are a form of criminal act that require special attention, aligned with the data on traffic accidents. In 2020, within the jurisdiction of the Makassar City Police, there were 1,281 traffic accident cases with 1,590 minor injuries, 8 major injuries, and 97 fatalities. These numbers call for firm action from law enforcement to reduce the frequency of accidents. As part of the implementation, a restorative justice policy was introduced by the Chief of Police. Thus, efforts to resolve criminal acts arising from traffic accidents through a restorative justice approach have been regulated and applied; however, expectations have not yet been fully met based on existing legal provisions. Accident numbers remain high, and settlements through peace agreements without restorative justice procedures still occur. This situation draws the author's attention to examine the matter further in scientific research in the form of a thesis entitled: "Legal Analysis of the Implementation of Restorative Justice in Traffic Accident Cases at the Makassar City Resort Police."
Based on the background above, the author formulates two research problems:

1. How is restorative justice implemented in resolving criminal traffic accident cases at the Makassar City Resort Police?
2. What factors hinder the police in applying restorative justice in resolving criminal traffic accident cases at the Makassar City Resort Police?

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# METHOD

The type of research employed in this thesis is normative–empirical legal research. Normative–empirical legal research is a method that combines normative legal elements supported by additional data and empirical components, in which primary data are used as the main source. This research examines legal issues in relation to their implementation within society. The empirical research type is a legal research method based on data and field studies in order to obtain primary data.

This research will be conducted at the Makassar City Police Resort (Polrestabesb Makassar), located in Makassar, a city with a high population density and heavy traffic flow, conditions which contribute to various problems, particularly in the field of road traffic. This location was selected because the issue raised concerns traffic violations resulting in casualties on public roads that ultimately lead to traffic accidents in Makassar City. The materials used in this research consist of primary and secondary data:

Primary Legal Materials used in this study consist of legislation and official records or minutes involved in the formation of legislation. The primary legal materials used include:

a. Law Number 2 of 2002 concerning the Indonesian National Police;
b. Law Number 22 of 2009 concerning Road Traffic and Transportation;
c. Chief of Police Circular Letter Number: SE/8/VII/2018 dated 27 July 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases;
d. Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

Secondary Legal Materials primarily consist of textbooks, as they contain fundamental principles of legal science and classical views with high academic qualifications. The secondary legal materials used include:

a) Academic books in the field of law;
b) Scientific journals.

Tertiary Legal Materials provide guidance or explanations for primary and secondary legal materials. The tertiary legal materials used in this research include:

a) The Indonesian Dictionary (Kamus Besar Bahasa Indonesia);
b) Online and internet-based sources.

Data collection in this research is conducted through three methods: library research, interviews, and documentation.

Library Research

Library research involves collecting relevant information materials by reading and reviewing books, magazines, articles, journals, academic writings, and legislation related to the issues examined in this research.

Documentation Study

Documentation study is a technique of collecting materials by examining documents to obtain data or information related to the issues being studied.

Interviews

Interviews are a technique of gathering materials through a verbal question-and-answer process conducted in one direction, meaning that the questions are posed by the interviewer, and the responses are provided by the interviewee, with predetermined goals and purposes.Based on all data collected in this research, analysis is carried out using

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descriptive analysis, namely a method of analysis performed by describing the phenomena or facts obtained from the research findings based on the collected materials, both primary and secondary data. The final stage of the analysis involves drawing conclusions and providing recommendations regarding the appropriate actions or solutions to the legal issues identified.

# RESULT & DISCUSSION

## A. Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes at the Makassar City Resort Police

The Makassar City Resort Police (Polrestabes Makassar) is a police institution under the jurisdiction of the South Sulawesi Regional Police, located in Makassar City, precisely at Jl. Ahmad Yani 9. The Traffic Unit, particularly the Traffic Accident Unit (Laka Lantas), is one of the divisions within Polrestabes Makassar with the main duty of maintaining safety and order on public roads, focusing on enforcing traffic violations.

The handling and resolution of traffic accident crimes are based on the authority deriving from the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, implemented through Standard Operating Procedures (SOPs) governing the processing of cases, beginning from the investigation and inquiry stages through the resolution stage. This process falls under the responsibility of the Head of the Traffic Unit (Kasat Lantas) of Polrestabes Makassar, and is intended to clarify the incident. The description is as follows:

1. Investigation Process in Traffic Accident Cases

During the investigation process, the Polrestabes Makassar Traffic Unit conducts an inquiry handled directly by one of the investigators, Rianda Fitro, who is responsible for following up on reports. According to Rianda Fitro, a TPTKP (Crime Scene Response Officer) member of the Traffic Unit at Polrestabes Makassar, the investigation process of traffic accidents in Makassar City is carried out in several stages. These stages form the basis for investigators to resolve traffic violations that result in traffic accidents. The investigation process by TPTKP personnel consists of the following phases:

a. Following Up on Information or Reports of Traffic Violations Resulting in Accidents

The police responsible for handling traffic violations that lead to traffic accidents are the Traffic Unit (Sat Lantas), particularly the Traffic Accident Unit (Unit Laka Lantas) of Polrestabes Makassar. The Head of the Traffic Unit acts as the official with full technical responsibility for the investigation of traffic violations resulting in accidents within the Polrestabes Makassar jurisdiction.

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When a suspected traffic violation resulting in an accident occurs, TPTKP field personnel immediately visit the crime scene (TKP) to collect necessary information and evidence.

b. Visiting the Crime Scene (TKP)

After receiving initial information, TPTKP personnel follow up on the report by conducting preliminary examinations of parties present at the scene, including alleged violators, victims, and witnesses. If the victim is found to be unconscious or deceased, examinations are carried out only on the suspected violator and witnesses. Personnel visiting the scene consist of TPTKP officers and technical support staff from the criminal laboratory and identification unit, who conduct activities such as photography, fingerprint collection, and gathering additional evidence. At this stage, TPTKP personnel also create sketches or diagrams of the accident, which include:

A depiction of the road where the accident occurred;
The direction of the vehicle causing the accident (subject);
The direction of the vehicle impacted (object);
The position of vehicles before, during, and after the accident;
Identification of the vehicles involved.

The information collected may serve as evidence. Therefore, all evidence must be documented in a police report and subsequently submitted to the Traffic Accident Investigator.

c. Checking for Injured or Deceased Victims

Upon arriving at the scene, TPTKP personnel examine both parties involved to determine whether any victims were injured or deceased. Injured victims are taken to the nearest hospital for medical treatment and to obtain a visum et repertum (VER).

d. Securing Evidence and the Suspected Violator

Once at the scene, TPTKP personnel secure evidence and the suspected violator to prevent potential mob retaliation or intervention by the victim's family.

e. Locating Witnesses at the Scene / Obtaining CCTV Footage

After securing evidence and the suspected violator, TPTKP personnel search for witnesses who directly observed the incident. If CCTV cameras are found at the scene, officers request the recording as supporting evidence.

f. Preparing a Police Report

Once sufficient evidence has been obtained, TPTKP personnel prepare a police report and submit it to the Traffic Accident Investigation Unit for the next stage of formal investigation.

2. Investigation Process in Traffic Accident Cases

After the investigation phase conducted by TPTKP personnel, the next stage is carried out by traffic investigators at Polrestabes Makassar. One of the investigators assigned to handle traffic accident cases is Ibnu Hajar, who was appointed by the Head of the Traffic Unit to conduct formal investigations.

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According to Ibnu Hajar, after the investigation process, the investigation proceeds through the following stages:

a. Issuing an Investigation Assignment Order

After receiving the police report from TPTKP personnel, the investigator issues an official assignment order, determining who will handle the traffic accident case.

b. Issuing an Investigation Warrant

Following the assignment order, the investigator issues an investigation warrant to collect evidence or clues before determining the suspect in the traffic violation.

c. Issuing a Seizure Warrant

The investigator issues a warrant for the seizure of evidence to prevent tampering or destruction of materials essential to the investigation.

d. Issuing a Witness Summons

The investigator summons witnesses to obtain testimony relevant to the accident.

e. Issuing a Summons for the Suspected Perpetrator/Victim

Investigators summon both the suspected perpetrator and the victim, although examinations are conducted separately to avoid confrontation.

f. Preparing the Examination Report

After completing the examinations, investigators prepare an official Examination Report (Berita Acara Pemeriksaan) to be used in the case review process (gelar perkara) to determine the suspect and victim.

It shows that the number of traffic accidents occurring from June 2021 to May 2022 experienced a decline in only three months, namely July and September 2021, as well as February 2022, while the remaining nine months recorded a significant increase in accident cases. The highest number of accidents occurred in May 2022, with a total of 131 cases (10.09%), whereas the lowest occurred in July 2021, with 89 cases (6.86%).

Regarding the number of vehicles involved in traffic accidents, two-wheeled vehicles were the most dominant, with 683 incidents, followed by four-wheeled vehicles or cars with 499 incidents, and other types of vehicles with 116 incidents.

3. Process of Settling Traffic Accident Cases Through Restorative Justice

In the context of investigating traffic accident cases resulting in fatalities within the jurisdiction of Polrestabes Makassar, investigators from the Traffic Accident Unit (Laka Lantas) frequently exercise their discretionary authority by not proceeding with the investigation to the next stage but instead resorting to legal measures through restorative justice. Investigators facilitate meetings between the alleged traffic violator and the victim's family to discuss the resolution of the matter.

The settlement of cases through restorative justice is a relatively new approach in the handling of criminal acts, particularly in traffic accident cases. Therefore, in the settlement of cases using restorative justice, investigators rely solely on the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

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Based on an interview with Ibnu Hajar, an investigator of the Traffic Accident Unit at Polrestabes Makassar, the settlement of cases through restorative justice is frequently carried out due to the mutual agreement between both parties—the victim and the alleged violator. The procedure for resolving cases through restorative justice in the termination of an investigation is described as follows:

a. Mediation Between Both Parties
The police, acting as criminal investigators from the Traffic Unit, conduct mediation between both parties until an agreement is reached regarding the traffic violation that caused the accident.

b. Submission of a Request for Termination of Investigation
Both parties—the victim and the alleged violator—submit a written request for amicable settlement to the Head of the Traffic Unit of Polrestabes Makassar, following the guidance and instructions of the investigators. The request includes a peace agreement and proof of restitution or restoration of the victim's rights.

c. Examination of the Application Documents by the Investigator
The investigator examines the completeness of the application documents and evidence of the restoration of the victim's rights.

d. Drafting of an Official Report
After examining the completeness of the restorative justice application documents, the investigator drafts an official report on the termination of the investigation through restorative justice, including clarifications from both parties.

e. Conducting a Special Case Review
The investigator prepares a formal request and conducts a special case review, submitted to the Head of the Traffic Unit of Polrestabes Makassar, so that the case may be considered for termination of the investigation through restorative justice, based on the peace agreement and proof of restitution to the victim.

f. Preparation of the Special Case Review Report
After the special case review is conducted, the investigator prepares a report on the implementation of the special case review. This report becomes the basis for issuing the Investigation Termination Order and the Investigation Termination Decree.

g. Issuance of the Investigation Termination Order and Decree
The investigator issues an Investigation Termination Order and an Investigation Termination Decree on legal grounds. These documents serve as official evidence for the police in case either party raises objections at a later time and as the legal basis for terminating the traffic accident case through restorative justice.

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h. Restoration of the Rights of the Victim and the Alleged Traffic Violator
The Traffic Unit of Polrestabes Makassar returns seized items or evidence to the rightful owners following the issuance of the Investigation Termination Order or Decree, if any seizure was conducted. Moreover, the investigator releases the perpetrator/suspect once the termination decree is issued, if they were arrested or detained.

i. Recording in the Restorative Justice Register Book
The investigator records the results of the restorative justice process in the restorative justice register book, and it is counted as case settlement.

j. Submission of the Notice of Investigation Termination to the Public Prosecutor
The investigator sends a notification of the termination of the investigation along with the Investigation Termination Decree to the public prosecutor for cases previously reported as having entered the investigation stage.

k. Uploading Documents to the Electronic Investigation Management System
The investigator inputs all data related to the termination of the investigation of the traffic accident case into the electronic investigation management system.
It can be seen that the number of cases successfully mediated by the police from June 2021 to May 2022 amounted to 1,204 out of a total of 1,298 cases, with a case-settlement percentage through restorative justice reaching 92%. This indicates that within the one-year period, only 94 cases were not successfully resolved through restorative justice.

The restorative justice settlement process mentioned above involves three key elements that significantly influence the resolution of traffic accident cases through restorative justice, namely:

1) Police
The police, particularly the Traffic Unit of Polrestabes Makassar acting as investigators, carry out their function as mediators in fulfilling the requirements of restorative justice.
According to Ibnu Hajar, an investigator of the Traffic Unit of Polrestabes Makassar, although many cases are resolved through restorative justice, some cases fail to reach settlement for several reasons—such as insufficient preliminary evidence, for example, the absence of witnesses at the scene or the lack of CCTV footage. These circumstances hinder investigators from collecting sufficient preliminary evidence, resulting in the case being terminated due to insufficient evidence.

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2) Victims
After the police—specifically investigators of the Traffic Unit of Polrestabes Makassar—study the traffic accident case to determine whether it fulfills both formal and material requirements for settlement through restorative justice, the perpetrator and the victim sit together to pursue a consensual resolution.

Based on an interview with Dg. Tutu, the father of Muh Farel, one of the victims in a case resolved through restorative justice, he explained that his case was mediated by Hamzah, an investigator, who brought together him as the victim's parent and Lavi Banggut, the motorcycle rider who hit his child. The perpetrator agreed to bear the medical expenses of his child amounting to Rp 7,000,000 (Seven Million Rupiah), and he considered the case settled and stated that he would not file any future claims.
However, this differs from the case involving Ruslan, the father of a traffic accident victim also named Muh Farel, who stated that he could not accept the incident in which his child was struck on the roadside because the perpetrator denied responsibility. As a result, the perpetrator showed no goodwill to settle the matter, causing the case to proceed to the prosecutor's office.

3) Perpetrators
The handling of traffic accident cases mediated by the police—especially investigators of the Traffic Unit—proceeds to the victim in order to reach a mutual agreement and settle the case through restorative justice.
Regarding cases successfully resolved through restorative justice, based on an interview with one of the traffic violators named Lavi Banggut, whose case was resolved through restorative justice, he stated that he personally requested that his case be resolved through deliberation and consensus with the assistance of investigator Hamzah. Through police mediation, the victim eventually agreed on the condition that he pay the victim's medical expenses amounting to Rp 7,000,000 (Seven Million Rupiah). He accepted this requirement, and a written peace agreement was drafted by the investigator for both parties.
Overall, approximately 92% of cases were resolved through restorative justice. From this data, it can be observed that restorative justice remains the dominant approach chosen by investigators in resolving cases handled by the Traffic Unit of Polrestabes Makassar.

## B. Obstacles Faced by the Police in Implementing Restorative Justice in the Settlement of Traffic Accident Crimes

Efforts to implement restorative justice at the police level, particularly within the Traffic Unit of Polrestabes Makassar, face challenges due to legal constraints, as not all traffic accident cases may proceed through restorative justice. This is because some cases do not meet the formal and material requirements.

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Based on an interview with Ibnu Hajar, an investigator of the Traffic Accident Unit of Polrestabes Makassar, the implementation of restorative justice in the settlement of traffic accident crimes has been carried out optimally. This is evidenced by the high number of cases resolved through restorative justice compared to the total number of traffic accident cases. However, several factors still hinder its implementation. These obstacles are categorized into internal and external factors.

a. Internal Factors
Internal factors are those originating from within the police institution, specifically the Traffic Unit of Polrestabes Makassar. These factors include:

1) Infrastructure
The implementation of restorative justice is greatly influenced by the availability of adequate infrastructure. The lack of supporting facilities often hinders investigators in finding necessary evidence (as shown in Table 2, remarks column). The absence of such evidence results from the lack of eyewitnesses at the scene and the absence of recording devices such as CCTV.
According to Muh Ikbal Ramadhan, a traffic accident response officer of the Traffic Unit of Polrestabes Makassar, inadequate infrastructure also obstructs investigators during traffic accident investigations. Traffic infrastructure—including CCTV—is essential for obtaining preliminary evidence. Such facilities play an important role in providing investigators with information needed to clarify the case without having to terminate it due to insufficient evidence at the scene.

2) Legal Factors
The settlement of cases through restorative justice must meet formal and material requirements. These requirements guide police investigators in determining the appropriate direction for case resolution. Many cases handled by the Traffic Unit cannot be resolved through restorative justice due to a lack of agreement between the victim and the perpetrator. When no agreement is reached, the case continues to the next legal stage (as shown in Table 2, remarks column).
This occurred in the case involving traffic violator Hendra Syamsul, who was driving a four-wheeled vehicle. He explained that his car was parked on the roadside, and when he began to drive, he did not see a toddler playing nearby and accidentally struck the child, causing minor injuries. The child's father immediately attacked him. Feeling wronged, he reported the assault to the Mariso Police Station.

b. External Factors

External factors originate from outside the police institution. These factors include:
1) Legal Awareness

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One of the main obstacles in the investigation and settlement of traffic accident cases is the lack of community participation. The public tends to be indifferent and reluctant to engage in legal processes, even though their role is crucial.
The lack of legal awareness among the community directly affects both perpetrators and victims in resolving cases through restorative justice. As shown in Table 2, some cases cannot proceed through restorative justice because they do not fulfill the formal requirements—specifically, the absence of at least two types of evidence necessary to classify the event as a traffic accident. This typically occurs because community members are unwilling to act as witnesses.
According to a traffic accident victim named Arman, whose case occurred in August 2021, he received a notice from the Traffic Unit investigator stating that his case had to be terminated because the accident location on Jalan Tamangapa Raya had no CCTV footage, and no witnesses were present at the time of the incident, allowing the perpetrator who hit his car with a motorcycle to flee.

2) Cultural Factors
Another important factor influencing the implementation of restorative justice is cultural attitudes. As shown in Table 2, there were five cases that proceeded to the prosecutor's office because the involved parties refused to settle the matter through restorative justice. Each party insisted on their position as either the victim or the aggrieved party, preventing investigators from facilitating an amicable resolution. One traffic violator, Hendra Syamsul, stated that although the incident was purely an accident and he initially intended to check on the child's condition, the victim's father immediately attacked him without allowing him to explain. Feeling unjustly treated, he reported the assault to the Mariso Police Station.

# CONCLUSION

Based on the discussion above, the conclusions that can be drawn from this research are as follows:
The implementation of restorative justice in the settlement of traffic accident crimes at the Makassar City Resort Police has not been carried out optimally due to the failure to meet both the formal and material requirements.
The factors that hinder the police, particularly investigators of Polrestabes Makassar, in conducting investigations of traffic violations that result in traffic accidents within the jurisdiction of Polrestabes Makassar consist of two categories: internal factors and external factors. Internal factors are obstacles originating from within the police institution itself, including infrastructure-related issues and legal factors. Meanwhile, external factors are obstacles experienced by the traffic police originating from outside the institution. These external obstacles include the level of legal awareness and cultural factors.

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