

The Application of Restorative Justice In The Settlement of Traffic Accident Cases (A Case Study In The Jurisdiction of The Bekasi City Resort Police)

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Abstract

Indonesian National Police Regulation Number 8 of 2021 regarding Criminal Case Handling based on Restorative Justice serves as the legal basis, empowering the police to resolve cases by applying Restorative Justice principles. This research aims to examine the implementation and inhibiting factors of Restorative Justice in resolving traffic accident cases in the jurisdiction of Bekasi City Police Resort. This study employs an empirical juridical approach with descriptive-analytical research specifications. The research location is conducted at Bekasi City Police Resort. The research findings indicate that firstly, Bekasi City Police Resort undertakes several stages in resolving cases through Restorative Justice, namely the attempt stage of mediation, the stage of requesting cessation of legal proceedings with Restorative, and the stage of determining the Letter of Termination of Investigation (SP3). Secondly, the research results show several obstacles in applying Restorative Justice to traffic accident cases in Bekasi City Police Resort, namely the substantive component. There are also other inhibiting factors, such as the victim party demanding a relatively high amount of compensation. In contrast, the perpetrator party cannot pay the total amount, failing the peace agreement.

Keywords: restorative justice; victims; traffic accident

Abstrak

Peraturan Kepolisian Negara Indonesia Nomor 8 Tahun 2021 mengenai Penanganan Tindak Pidana dengan Restorative Justice menjadi dasar hukum yang memberikan kewenangan kepada kepolisian untuk menyelesaikan kasus-kasus dengan menerapkan prinsip-prinsip Restorative Justice. Penelitian ini bertujuan untuk mengkaji mengenai penerapan dan faktor penghambat Restorative Justice dalam penyelesaian kasus kecelakaan lalu-lintas di wilayah Hukum Kepolisian Resor Bekasi Kota. Penelitian ini menggunakan menggunakan metode pendekatan yuridis empiris dengan spesifikasi penelitian deskriptif analitis. Lokasi penelitian dilakukan di Kepolisian Resor Bekasi Kota. Hasil penelitian menunjukkan bahwa pertama, Kepolisian Resor Bekasi Kota melakukan beberapa tahapan dalam penyelesaian perkara melalui Restorative Justice,

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yakni tahap upaya perdamaian dengan mediasi tahap permohonan penghentian proses hukum dengan Restorative Justice dan tahap penetapan Surat Perintah Penghentian Penyidikan (SP3) dengan syarat ganti rugi dan pemenuhan hak-hak kepada korban telah terpenuhi sepenuhnya oleh pelaku. Kedua, diperoleh hasil penelitian bahwa, terdapat beberapa hambatan dalam penerapan Restorative Justice terhadap kasus kecelakaan lalu-lintas di Kepolisian Resor Bekasi Kota, yaitu komponen substansi hukum. Selain itu terdapat pula faktor penghambat lainnya dimana pihak korban mengajukan besaran ganti rugi cukup tinggi sedangkan pihak pelaku tidak mampu membayar keseluruhan sehingga kesepakatan perdamaian menjadi gagal.

Kata kunci: restorative justice; korban; kecelakaan lalu-lintas

1. INTRODUCTION

Transport is a crucial sector that supports development and provides economic development services. Transport facilities must be provided before other development projects. The role of transport is not only to facilitate the flow of goods and human mobility but also to help achieve the optimal allocation of economic resources.¹ The importance of transport is reflected in the increasing need for transport services for the mobility of people and goods to and from all corners of the country, even to and from abroad.² Realizing that the role of transportation is vital, traffic and road transport must be arranged in an integrated national transportation system to discover the availability of transportation services that align with traffic needs and are orderly, safe, comfortable, regular, and smooth. Many phenomena occur in society in the 21st century, such as the rapid development of information and communication technology, which affects the paradigm shift in thinking and behavior. The development of transport is so fast that many car and motorbike companies make it easy for people from the upper class to the lower middle class to own motorized vehicles.

Both developed and developing countries, such as Indonesia, face traffic problems. These problems often occur in Indonesia, including congestion, air pollution, traffic violations, and traffic accidents.³ Road traffic and transport are regulated in Law No. 22

¹ M. Nur. Nasution, *Manajemen Transportasi* (Jakarta: Ghalia Indonesia, 2004).

² Umi Enggarsasi and Nur Khalimatus Sa'diyah, "Kajian Terhadap Faktor-Faktor Penyebab Kecelakaan Lalu Lintas Dalam Upaya Perbaikan Pencegahan Kecelakaan Lalu Lintas," *Perspektif* 22, no. 3 (September 27, 2017): 228, <https://doi.org/10.30742/perspektif.v22i3.632>.

³ Arif dan Mahmudal Budiarto, *Rekayasa Lalu Lintas* (Solo: UNS Press, 2007).

Year 2009 on Road Traffic and Transport (Law No. 22 Year 2009). The regulation is the legal basis for sanctioning drivers who commit traffic offenses. The existence of rules means that people must comply with all the rules to pass traffic properly and correctly so as to create smoothness, safety, and security in traffic.⁴ Even though there are laws and regulations, traffic accidents cannot be avoided. This is caused by human factors and road structures that result in many traffic accidents (laka-lantas), one of which is in Bekasi City. As stated by Kanit Gakkum Bekasi City Police on Tuesday, 24 October 2023, the number of traffic accidents in Bekasi City from January to September 2023 was 851 incidents. The death toll reached 51 people; 117 were seriously injured, and 880 others suffered minor injuries.⁵

Based on the description of the news above, in the Bekasi City Police jurisdiction, there are still many traffic violators, including traffic accidents; the consequences also vary from material losses and injuries to death. On this basis, Indonesian National Police Regulation Number 8 of 2021 (Perpol No. 8 of 2021) concerning Handling Crimes Based on Restorative Justice was born to assist the police in handling traffic accident cases. The regulation introduces a concept of law enforcement called the Restorative Justice System, in which the primary concern of the idea is the interests of the perpetrator, victim, and society. Law enforcement by the police is closely related to discretion, which is related to decisions that are not strictly regulated by legal rules. However, in some concrete cases, police officers have their elements of judgment, so discretion is between law and morals (ethics in a narrow sense).⁶

Law enforcement must be able to harmonize the relationship between the values spelled out in the rules that manifest and the attitude of action as a series of final stage value elaboration to create, maintain, and maintain the peace of life. Therefore, law enforcement does not merely mean implementing laws and regulations, although the

⁴ Arsyad dkk, "Penerapan Diversi Terhadap Anak Dalam Perkara Kecelakaan Lalu Lintas," *Jurnal Sains Sosio Humaniora* 4, no. 2 (2020): 467–78, <https://repository.unja.ac.id/18341/>.

⁵ Redaksi, "Sepanjang Tahun 2023 Terjadi 851 Kecelakaan Lalu Lintas Di Kota Bekasi," *Infobekasi.Co.Id.*, 2023, <https://infobekasi.co.id>. diakses pada tanggal 10 November 2023.

⁶ Muhammad Nadzir Nugroho, Adi Saputra, "Penerapan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Kecelakaan Lalu Lintas," *Jurnal de Facto Pascasarjana Universitas Balikpapan* 9, no. 2 (2023): 60–73, <https://jurnal.pascasarjana.unibabpn.ac.id/index.php/jurnaldefacto/article/view/137>.

reality tends to be so. Criminalization is a punishment imposed by the state on a person who commits an offense against the provisions of the law; the punishment is imposed deliberately by the state on the convict so that it is felt as a pain.⁷ Many negative impacts will be received by the perpetrator if subjected to imprisonment. Therefore, as one of the efforts to avoid the adverse effects of imprisonment, it is necessary to have a Restorative Justice approach as a change in punishment or criminal imposition that is different from the existing concept of criminal imposition.

Restorative Justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators and victims, and other related parties by emphasizing restoration to the original state and not retaliation. Perpetrators, victims, and the community work together and try to find solutions that are considered fair to all parties (win-win solutions).⁸ Punishment is the imposition of punishment on the perpetrator and is the last resort (*ultimum remedium*). Restorative Justice is concerned with rebuilding relationships after a criminal offense, not just repairing the relationship between the offender and the community. Sarre says Restorative Justice is a hallmark of the modern criminal justice system.⁹

Criminal law can address a crime considered to be restorable with Restorative Justice, where the perpetrator is encouraged to repair the harm that has been caused to the victim, family, and community. The concept of Restorative Justice is part of an approach that focuses on the state of creating Justice and balance both for the perpetrators who commit criminal acts and also for the rights of victims; procedures and criminal Justice based on the principle of punishment are changed towards a family settlement process

⁷ Septa Candra, "Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 2 (August 31, 2013): 263, <https://doi.org/10.33331/rechtsvinding.v2i2.76>.

⁸ Chandra Noviardy Irawan, "Penanganan Tindak Pidana Pembunuhan Yang Dilakukan Oleh Anak Berdasarkan Restorative Justice," *JURNAL USM LAW REVIEW* 4, no. 2 (November 21, 2021): 672, <https://doi.org/10.26623/julr.v4i2.4283>.

⁹ Muladi, "Implementasi Pendekatan Restorative Justice Dalam Sistem Peradilan Pidana Anak," *E-Journal Undip* 2, no. 4 (2014): 58–85, <https://ejournal.undip.ac.id/index.php/phpidana/article/view/25036/15649>.

and mediation until an agreement is reached.¹⁰ The concept of Restorative Justice views criminal offenses not as crimes against the state or the public but against victims. Restorative Justice settlement focuses on restoring the victim, not punishing the perpetrator.

Ruslan Renggong¹¹ researched previous research titled "Restorative Justice Application on Traffic Accident Cases at The Makassar City Police Resort, Indonesia." The fundamental difference from earlier research is that the research in Makassar examines the application of Restorative Justice in handling traffic accident cases at the Makassar Police Resort with a qualitative approach through in-depth interviews, observation, and documentation. The findings show that although there is a preference for court, most cases are resolved at the investigation stage with Restorative Justice. The main obstacle is the lack of widespread socialization, which needs to be legally regulated. The recommendation of this study is to revise KUHAP to include Restorative Justice provisions in detail. At the same time, this research examines Police Regulation Number 8 of 2021 as the legal basis for applying Restorative Justice at the Bekasi City Police Resort.

This research uses an empirical juridical approach with descriptive-analytical specifications to analyze the implementation and obstacles in resolving traffic accident cases. The findings show that the Bekasi Police Resort implements the stages of mediation and termination of legal proceedings but faces barriers such as high compensation demands and the offender's inability to pay, failing the peace agreement. In addition, The fundamental difference between the two studies is the methodological approach used. The Makassar study used a qualitative approach to explore the implementation of Restorative Justice. In contrast, the Bekasi study used an empirical juridical approach to analyze the implementation of Restorative Justice based on Polri regulations. In addition, the research location and the specific focus of each study also

¹⁰ Rena Yulia and Aliyth Prakarsa, "Telaah Yuridis Terhadap Pengaturan Restorative Justice Di Kepolisian," *Wajah Hukum* 5, no. 2 (October 15, 2021): 562, <https://doi.org/10.33087/wjh.v5i2.716>.

¹¹ Ruslan Renggong, "Restorative Justice Application on Traffic Accident Cases At The Makassar City Police Resort, Indonesia," *Russian Law Journal* XI, no. 3 (2023): 607–18, <https://repository.unibos.ac.id/xmlui/handle/123456789/6057>.

influenced the findings and recommendations produced, particularly about barriers and solutions in implementing Restorative Justice at the local level.

The essence of Restorative Justice is "empowerment" or empowerment of stakeholders. Concrete empowerment is carried out through a meeting process (deliberation), in this case between the perpetrator and the victim or the community, to discuss and actively participate in resolving the criminal matter.¹² The settlement with Restorative Justice can overcome the problem of overcapacity, the increasing backlog of cases, the unbalanced number of law enforcers, the long process, and the cost of cases that need more light.¹³ The police in the investigation process with Restorative Justice are the primary keepers of the criminal justice system. The Indonesian National Police (Polri) is a state instrument that plays a role in maintaining public security and order, law enforcement, protection, and services to the community in the context of maintaining domestic security. Therefore, Polri must continue to develop to become more professional and closer to the community.¹⁴ The police are the ones who determine whether the case can proceed to the next stage or not, particularly in traffic accident cases. Traffic accidents are events that often contain elements of negligence. The perpetrator does not intend to commit the act at first, but due to negligence or lack of caution, the accident occurs.

2. RESEARCH METHODS

The research approach method used is empirical juridical, with descriptive research specifications. The research location is the Bekasi City Resort Police, with research interviews with Kanit Gakkum officials of the Bekasi City Resort Police who are involved in resolving traffic accident cases with Restorative Justice. The types of data used are primary data and secondary data. Data collection methods with interviews, participant

¹² KuartPuji Prayitno, "Restorative Justice Untuk Peradilan Di Indonesia (Perspektif Yuridis Filosofis Dalam Penegakan Hukum In Concreto)," *Jurnal Dinamika Hukum* 12, no. 3 (September 15, 2012), <https://doi.org/10.20884/1.jdh.2012.12.3.116>.

¹³ Arman Sahti, "Penerapan Konsep Restorative Justice Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Dihubungkan Dengan Surat Edaran Kepolisian Republik Indonesia Nomor: Se/8/Vii/2018 Tentang Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkar," *Aktualita (Jurnal Hukum)* 2, no. 2 (December 23, 2019): 615–42, <https://doi.org/10.29313/aktualita.v2i2.5176>.

¹⁴ Sadjijono, *Hukum Kepolisian: Polisi Dalam Perkembangan Hukum Di Indonesia* (Yogyakarta: Laksbang Pressindo, 2008).

observation, literature study, and documentation study. Data analysis method Qualitative analysis is done using the content analysis method.

3. RESULTS AND DISCUSSION

3.1. The Application of Restorative Justice in the Settlement of Traffic Accident Cases in the Bekasi City Police Department

The application of Restorative Justice in the settlement of traffic accident cases in the jurisdiction of the Bekasi City Resort Police will be analyzed using the theory of Restorative Justice. Restorative Justice is understood as a form of case settlement approach according to criminal law by involving the perpetrator of the crime, the victim, the victim's family, or the perpetrator and other related parties to find a fair solution by emphasizing restoration to the original state and not retaliation.¹⁵ The research results show that traffic accident cases in the Bekasi City Region are high every year, reaching 1046 (one thousand forty-six cases) cases in 2023. The following is data on traffic accident cases for the last 5 (five) years, namely 2023, 2022, 2021, 2020, and 2019, which were resolved with Restorative Justice by the Bekasi City Resort Police:

Table 3.1 Recapitulation of Data on Traffic Accident Cases Resolved with Restorative Justice by Bekasi City Resort Police

No	Period	Number of Accidents	Restorative Justice
1	2019	686	670
2	2020	639	416
3	2021	641	165
4	2022	886	720
5	2023	1046	973
Total		3898	2944

Source: Bekasi City Resort Police

¹⁵ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016).

The initial stage in the Restorative Justice process in handling traffic accident cases by the Bekasi City Police is Case Identification. The police identify traffic accident cases that are considered suitable for the Restorative Justice approach. Generally, cases involving relatively minor physical or psychological damage and where the offender is willing to participate can be considered as good candidates. Based on the interview results, there are several requirements for the application of Restorative Justice in traffic accident cases by the Bekasi City Resort Police.

The conditions for the application of Restorative Justice listed in the Regulation of the National Police of the Republic of Indonesia concerning Handling Crimes with Restorative Justice (Perpol No. 8 of 2021), namely:

- a. Does not cause unrest and/or rejection from the community;
- b. Does not result in social conflict;
- c. Does not have the potential to divide the nation;
- d. No radicalism and sparatism;
- e. Not a repeat offender of a criminal offence based on a court decision;
- f. Not a criminal offence of terrorism.

Furthermore, there are also special requirements for traffic accident cases that can be resolved with Restorative Justice which are listed in Article 7 letter c and Article 10 letters a and b of Police Regulation No. 8 of 2021.

Traffic accident cases are included as criminal offences that can be resolved with Restorative Justice because they have fulfilled the conditions listed in Police Regulation No. 8 of 2021. Based on the results of interviews regarding the handling of traffic accident cases, there are several initial stages in handling traffic accident cases by the Bekasi City Resort Police, namely:

- a. Receiving a report from the public that a traffic accident has occurred;
- b. Making a report;
- c. Carry out an investigation first to ascertain whether or not there is a traffic accident;
- d. Submitting the suspect to the Bekasi Police investigator with some evidence that has been found.

Furthermore, the Bekasi City Police conducted 3 (three) stages related to the Restorative Justice mechanism in resolving traffic accident cases, namely:

a. Stage of peace efforts

The peace stage is carried out by mediation or deliberation. The police provide an explanation and understanding to the perpetrator and victim about what can be expected from the Restorative Justice process, including how the meeting will be conducted, the role of the facilitator or mediator, and the purpose of the Restorative Justice process. The investigator gives the litigants time to mediate. This mediation process serves as a means to address the issues at hand and seek a resolution. The determination of compensation and fulfilment of rights to victims is determined in the mediation process. The Bekasi Police play the role of facilitator and mediator by organising meetings, providing a meeting place if needed, and presenting the best options to reach a fair settlement through Restorative Justice.

b. Application stage

A request for termination of the legal process with Restorative Justice can be made by the victim, namely the victim's family or a person who receives a power of attorney from the victim to the police. The application letter contains a statement of peace and proof that the victim's rights have been restored. The victim is the aggrieved party, giving control to the victim to apply or not can maintain the psychological safety of the victim.

c. The stage of determining the Order to Discontinue Investigation (SP3)

The results of the mediation that has been carried out become the basis for the decision for the police to issue an Order to Discontinue Investigation (SP3). The SP3 is only issued if the Bekasi City Police have ensured that all compensation has been paid and the rights of the victim have been fulfilled.

After carrying out the case identification process, the Bekasi City Police notified the perpetrator and victim about the possibility of participating in the Restorative Justice process. Both were invited to participate voluntarily. Based on the interview results, the police play the role of facilitator and mediator. The police organise and facilitate meetings between the perpetrator, victim and other relevant parties to help run a fair and structured

Restorative Justice process. The police are also responsible for organising meetings between offenders and victims, ensuring safety and comfort during the process, and providing a supportive environment for open dialogue where necessary.

Once a peace agreement is reached, the responsible party recognises his or her wrongdoing and promptly pays the resulting damages. Regarding compensation, the amount of compensation and the fulfilment of victims' rights are determined by the agreement of both parties during the mediation process. Payment of compensation can be made in a lump sum or in instalments with a certain period of time. The details of the compensation payment can be adjusted to the financial capacity of the perpetrator and the needs of the victim.

Negotiations related to the addition or adjustment of the compensation deadline and the fulfilment of victims' rights are required if there is a change in the financial situation of the perpetrator. Violation of the compensation obligation by the perpetrator may result in the termination or cancellation of the settlement agreement and the traffic accident case will be referred to the conventional legal system. The police will not proceed with Restorative Justice if the compensation has not been fully paid and the victim's rights have not been fulfilled in accordance with the principles of Restorative Justice. The police will not issue an Order to Stop Investigation (SP3) if the rights of victims have not been fulfilled. The point is that the time limit and how the compensation will be paid is determined by the agreement made between the perpetrator and the victim, as well as the mediator involved in the Restorative Justice process.

Furthermore, a written agreement will be made and signed on stamp duty by both parties. After the agreement has been signed and the victim's rights have been fulfilled by the perpetrator, the victim can submit a request for termination of the legal process with Restorative Justice to the police. The application letter contains a statement of peace and proof that the victim's rights have been restored.

Once the mediation process has taken place and the agreement has been signed, the police will monitor and support the implementation of the agreement. This involves monitoring the payment of compensation or the implementation of other restorative measures. Once an agreement is in place, the process can be evaluated to understand its

effectiveness. The police may conduct follow-up monitoring to ensure that all parties involved are satisfied. Once the entire Restorative Justice process has been completed, the police stop the investigation and issue a Letter of Termination of Investigation (SP3) on the grounds of Restorative Justice.

3.2. Inhibiting Factors in the Application of Restorative Justice towards the Settlement of Traffic Accident Cases Resulting in the Bekasi City Resort Police Legal Territory

The inhibiting factors of the Bekasi City Resort Police in the application of Restorative Justice to the settlement of traffic accident cases will be analyzed using Lawrence M. Friedman's legal system theory, which states that the law consists of structural, substance, and cultural components:¹⁶

- a. The structural component is the institutions created by the legal system with various functions to support the operation of the system;
- b. The substance component is the output of the legal system in the form of regulations and decisions that are used both by the regulating party and the regulated party;
- c. The culture component consists of values, attitudes, perceptions, custom ways of doing, and ways of thinking that influence the operation of law by Lawrence M. Freidman, referred to as legal culture. This legal culture serves as a bridge that connects the rule of law with the legal behavior of all citizens.

Noting Lawrence M. Friedman's opinion, the components of the legal system greatly determine the operation or operation of a legal system. The discussion on the application of Restorative Justice to the settlement of traffic accident cases is analyzed from the components of the legal system, namely the structure component, substance component, and culture component, with the following explanation:

a. Structure Component

The legal structure in question is the institutions and law enforcement officials related to the application of Restorative Justice to the settlement of traffic accident cases.

¹⁶ Esmi Warassih, *Pranata Hukum Sebuah Telaah Sosiologis* (Semarang: Pustaka Magister, 2014).

In this case, the Bekasi City Resort Police consists of the Head and Deputy Head of the Traffic Police, Kaur Binops, Kanit Turjawali, Kanit Kamsel, Kanit Gakkum, and Kanit Regident. Based on the research results, no obstacles were found in applying Restorative Justice to the settlement of traffic accident cases from the legal structure component.

b. Substance Component

The substance component is legislation relating to the application of Restorative Justice to the settlement of traffic accident cases. The study results show that in the inhibiting factors of Restorative Justice towards the settlement of traffic accident cases, there are obstacles in the legal substance component. This is because there are inconsistent regulations regulating Restorative Justice, especially in handling traffic accident cases. Law No. 22 Year 2009 on Road Traffic and Transport (Law No. 22 Year 2009) in Article 230 regulates that the criminal justice system must resolve traffic accidents, while Article 236 paragraph (2) regulates that traffic accidents are out of court as long as both parties make an amicable agreement.

c. Cultural Component

The cultural component is an element of social attitudes and values. The artistic component consists of values, attitudes, perceptions, customs, ways of doing, ways of thinking, and opinions that influence the operation of law. Based on the research results, no obstacles were found in applying Restorative Justice to the settlement of traffic accident cases from the legal culture component.

Furthermore, based on the results of the interview, the Bekasi City Resort Police several times encountered a situation where the victim demanded a large amount of compensation. This resulted in the perpetrator's family, which has a simple background, having difficulty in fulfilling the demands made by the victim's family. This results in the perpetrator's family having difficulty fulfilling the demands for compensation made by the victim's family and can result in a failed peace agreement.

CONCLUSION AND SUGGESTION

Based on the research results in the previous chapter, the Restorative Justice approach to handling traffic accidents has been implemented in the jurisdiction of the

Bekasi City Resort Police. The three stages of the mechanism for resolving traffic accident cases with Restorative Justice carried out by the Bekasi City Resort Police are the stage of peace efforts with mediation between parties to find a mutual settlement, the stage of requesting termination of the legal process with Restorative Justice submitted by the victim to the police, and the stage of determining the Order to Terminate Investigation (SP3) provided that the perpetrator has fully fulfilled compensation and fulfillment of rights to victims. The obstacles in applying Restorative Justice to traffic accident cases, namely the Substance Component, where there are inconsistent regulations on Restorative Justice in handling traffic accident cases, need to be more consistent. In addition, there are also other inhibiting factors where the victim proposes a high amount of compensation. At the same time, the perpetrator cannot pay the whole, so the peace agreement fails.

Based on the research results, the author advises the Bekasi City Resort Police to make massive socialisation efforts to the community regarding the application of Restorative Justice. Thus, it is hoped that the community can better understand the provisions of Restorative Justice so that, in the future, this process can be better understood and accepted by all levels of society.

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