

ENFORCEMENT OF RESTORATIVE JUSTICE IN TRAFFIC CRIME CASES

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Abstract

This scientific study aims to explore the implementation of restorative justice in cases involving fatal traffic crimes. The research focuses on the principles of law enforcement based on restorative justice for traffic accidents causing human casualties. The study adopts a normative research method, utilizing a statutory, conceptual, and case-based approach. The findings reveal that the application of restorative justice concepts in crime prevention practices in Indonesia, particularly in the absence of significant legislative changes to criminal procedural or criminal laws, lacks a specific framework within the context of Indonesian criminal law. The study suggests that restorative justice should be incorporated into the investigative, prosecutorial, and judicial processes, emphasizing the resolution of conflicts among the main stakeholders involved, namely victims, perpetrators, and their communities. The approach prioritizes their interests and aims to restore harmony and balance in social relations. Overall, the study underscores the importance of embracing and operationalizing restorative justice within the legal system to effectively address social problems.

Keywords: Restorative Justice; Traffic Crime; Legal Protection

1) INTRODUCTION

In Indonesia, traffic congestion is increasing due to the increasing number of two-wheeled and four-wheeled vehicles. Therefore, it is very important for road users, especially drivers, to comply with traffic regulations in Indonesia. Compliance with these rules is expected to minimize the occurrence of accidents. Traffic accidents are unwanted events that road users want to avoid, but accidents can occur due to intentional or unintentional actions that result in injury or death. Such accidents are regulated in Article 230 of Law Number 22 Year 2009 on Road Traffic and Transportation, which aims to protect individuals actively and passively.

Active protection is to ensure that the judicial process is humane and fair, without arbitrariness.¹ With these objectives in mind, the judicial process for perpetrators involved in traffic accidents that result in injuries and fatalities must be approached from a humanitarian perspective and a sense of justice.

The implementation of traffic regulations must take into account several factors, including:²

1. Safety of traffic and road transportation: Ensuring the freedom of individuals, goods, and vehicles from unlawful acts and fear when using the roads.
2. Safety in traffic and road transportation: Provides protection against the risk of accidents that could harm individuals, vehicles, roads and the environment.
3. Traffic and road transportation order: Creating an orderly traffic system with due regard for the rights and obligations of all road users.
4. Smooth flow of traffic and road transportation: Ensure unimpeded and congestion-free movement of traffic and transportation.

By understanding and following these principles, a more orderly and efficient traffic system can be created. Therefore, it is very important for road users to be self-aware and obey traffic rules when using road facilities. Different societies exhibit different levels of awareness regarding the law, including compliance, carelessness and negligence. These behaviors are often seen on roadways where transportation activities take place and where traffic accidents, both intentional and unintentional, occur.

The concept of out-of-court settlement through restorative justice is a relatively new perspective that is being explored from both a theoretical and practical perspective. When considering the practical implications, restorative justice is expected to be in line with the quest for justice. In addition, in the judicial process there are various types of cases that burden the system and increase state expenditure, which is contrary to the principles of providing simple, efficient and cost-effective justice, without compromising the objectives of the justice system, namely legal certainty, expediency and justice.

In this context, the Indonesian National Police has been given the authority to take the necessary actions, including resolving criminal cases out of court, as long as an agreement between the perpetrator and the victim or the victim's family is met. The discretionary authority possessed by the police is based on the provisions outlined in Article 16 paragraph (2) in conjunction with Article 18 paragraph (10) of Law No. 02 of 2002 concerning the Indonesian National Police, which states that "in matters deemed very necessary and urgent for the public interest, police officers may act according to their own judgment, as long as this is done in very necessary circumstances and in accordance with the code of ethics of the police profession."

Therefore, the resolution of criminal cases (crime clearance) by the police must follow transparent and accountable procedures, with the following provisions:

1. Prioritize the protection of the victim's interests, ensuring that the victim does not suffer further harm.
2. Involve the community social system and/or the Police and Community Partnership Forum (FKPM) in the resolution process.
3. Ensure active and strict participation in dealing with criminal offenses in the situation.

The police initiative is to facilitate a meeting between the perpetrator and the victim and/or the victim's family, which aims to achieve reconciliation on the condition that all parties involved reach an agreement. In terms of investigation and restorative justice, the police serve as the gatekeepers of the criminal justice system. This perspective is in line with that of Donald Black, who emphasizes the investigative and evaluative responsibilities of police officers who have expertise in dealing with common crimes. In general, police tend to respond reactively rather than proactively, with members of the public responsible for reporting and filing complaints regarding suspected criminal offenses. The shift in the investigative model from a punitive approach to a restorative approach, which focuses on the healing of offenders and victims, requires significant adaptation and is a lengthy process. One example of this shift is the inclusion of victims into the investigation and examination process, known as victim participation schemes. However, this poses challenges as it requires a transition from traditionally closed prosecution patterns to more open ones.

2) RESEARCH METHODS

This research uses a normative juridical research method that includes a comparative approach, conceptual approach, and statutory approach. This research relies on secondary data sources. The data is analyzed descriptively and qualitatively. The research specification uses descriptive analytics, namely describing data that aims to obtain a complete picture of certain legal events that occur in society and then analyzed using relevant rules.

3) RESEARCH RESULTS AND ANALYSIS

Principles of Restorative Justice in Traffic Accident Law Enforcement

The application of restorative justice principles in the field of criminal justice in Indonesia cannot rely solely on waiting for changes to the law to enable their application.³ waiting for changes to the criminal procedure law or criminal law, which are generally not a legislative priority, is not an appropriate option. Ignoring the concept of restorative justice in Indonesia's criminal justice system means ignoring victims, victims' families, and affected communities. The current criminal justice system is unbalanced, focusing on punitive measures rather than solving crime and its consequences as a social problem.

Satjipto Rahardjo argues that there are many aspects outside the legal sphere that contribute to order and that society itself can create social norms. The speed at which rules emerge is faster than the legislative process of creating law, which takes years.⁴ This highlights that law alone is not enough to create order. Therefore, it is important to discuss the operationalization of restorative justice in Indonesia, including the absence of a special forum and its application in the investigation, prosecution and court processes.

Traffic accidents are considered minor crimes, and reconciliation efforts between the parties involved cannot eliminate criminal charges, especially in cases that result in the death of the victim. However, such reconciliation efforts can be taken into consideration by the judge in making a decision regarding mitigating or aggravating circumstances. The provision of compensation is a means to promote justice and welfare for victims as members of society. The implementation of compensation programs should encompass a range of approaches, including social welfare, humanitarian, and criminal justice system perspectives.

Accountability for criminal acts, particularly traffic accidents, is necessary. Restorative justice can contribute to peaceful conflict resolution between the parties involved, and compensation plays an important role in addressing criminal liability. By incorporating restorative justice, the law serves as a tool of social control and dispute resolution.⁵ Restorative justice was originally inspired by community justice, especially in non-western cultures, such as indigenous peoples. Its development was driven by principles of equality and community relations. The concept of restorative justice has been used in various indigenous traditions in Indonesia.

Black's Law Dictionary highlights that restorative justice is an alternative form of punishment for crime, which focuses on repairing the damage caused to society, bringing victims together, and holding offenders accountable for their actions.⁶ This approach emphasizes balanced methods that limit consequences for offenders while emphasizing their responsibility and providing support to victims. As part of restorative justice, offenders may be required to provide compensation, perform community service, or make certain changes as directed by law enforcement.⁷

According to Marit de Haan and Tine Destrooper, restorative justice, also known as reparative justice, is an approach that prioritizes the needs of victims and offenders, as well as the individuals involved, rather than simply following abstract legal principles or seeking punitive measures. Victims play an active role in the process, while offenders are encouraged to take responsibility for their actions and make amends by apologizing, returning stolen goods, or engaging in community service. Restorative justice involves both victims and offenders, focusing on their individual needs. It also offers assistance to offenders to prevent future offenses. It considers crimes as offenses against individuals or communities, rather than solely against the state. Restorative justice that encourages dialogue between victims and offenders leads to higher levels of victim satisfaction and offender accountability.⁸

From these definitions, it is clear that restorative justice is a criminal justice framework that considers the interests and needs of victims, their families and affected communities, with a focus on holding offenders accountable for their actions. Restorative justice goes beyond simply imposing punishment, but also ensures that the needs of victims are given fair attention in the judicial process, as reflected in court decisions.

However, in the context of traffic accidents in Jakarta, Indonesia, the application of restorative justice is still limited. According to Kakorlantas Polri, only a small part of the efforts made in such cases involve restorative justice. This is mainly because law enforcement agencies, such as the police, mostly rely on a positivist legal approach, which only considers the legal aspects. Most victims and their families are reluctant to engage in penal mediation, such as meetings between perpetrators and victims. As law enforcement officers, the police are obliged to carry out their duties in accordance with applicable regulations.

The settlement of criminal cases, especially those involving traffic accidents with child perpetrators, through the application of restorative justice can be said to be a manifestation of the law that lives in society. Roscoe Pound explained that law functions as a means of reforming or engineering society, so that law is an instrument of social engineering. Based on this explanation, the settlement of traffic accident cases using a restorative justice approach is a living legal principle that is currently practiced and effectively regulates the behavior of individual lives. In particular, in cases where children are involved in criminal acts, using a restorative justice approach is one method that can be used to implement diversion programs aimed at child offenders.⁹

Restorative Justice Approach in Tackling Traffic Accident Crimes

Restorative justice, also known as restorative justice, is an approach that emerged in the 1960s as a way to deal with criminal cases. It differs from the conventional criminal justice system by emphasizing the direct involvement of offenders, victims, and communities in the resolution process. While there is still an ongoing theoretical debate surrounding this approach, it has influenced legal policy and practice in various countries.¹⁰

The historical roots of restorative justice are often attributed to Albert Eglash, who sought to distinguish between three different forms of criminal justice. The first form is "retributive justice," which focuses on punishing offenders for their actions. The second form is "distributive justice," which prioritizes the rehabilitation of offenders.¹¹ Finally, Eglash introduced the concept of "restorative justice," which is closely linked to the principle of restitution. Eglash's categorization of criminal justice into these three types has played an important role in shaping the discussion on restorative justice. Therefore, Albert Eglash is credited with introducing the concept of restorative justice in 1977.

However, it should be noted that long before Eglash's ideas emerged, ancient civilizations and traditions in Arab, Greek, Roman, and Hindustani cultures already had practices that were in line with restorative justice principles, especially in cases of homicide. Although the term "restorative justice" was not used at the time, restorative approaches were already in place. Similarly, Buddhist, Taoist, and Confucian communities have long

advocated restorative justice in resolving their legal issues, with the motto "he who makes amends is forgiven" emphasizing the concepts of atonement and forgiveness. This historical context underscores that restorative justice has strong roots in the justice traditions of various civilizations, including ancient Arab, Greek, and Roman societies, as well as Hindu, Taoist, and Confucian cultures in India, where restorative approaches are even applied to murder cases.¹²

Approaching criminal cases from a restorative justice perspective presents an alternative perspective and method for understanding and addressing crime. This is exemplified by the definition proposed by Dignan, where restorative justice is described as a contemporary framework for dealing with wrongdoing and conflict. Restorative justice is increasingly accepted and supported by professionals in education, law, social work, counseling, and community groups. Restorative justice is a values-based approach that emphasizes balanced consideration between the aggrieved individual, the perpetrator, and the affected community. However, when it comes to the roles of offenders and victims, there are several weaknesses in the various models of case resolution in the criminal justice system, namely:

- a) Victims, who should ideally be central figures in mechanisms separate from offenders, appear to be excluded from many existing mechanisms
- b) The presence of victims raises concerns about the feasibility of applying restorative justice approaches to all categories of criminal offenses.
- c) The willingness of victims to be actively involved is an obstacle to using restorative justice approaches in dealing with criminal cases. For example, in situations where a traffic accident results in the death of the victim, it may be possible to arrange a meeting between the offender and the victim's family, provided there is a mediator to facilitate the process.

Restorative justice is a concept related to punishment, but goes beyond the boundaries of formal and material criminal law provisions. Its scope must also be considered in the context of criminology and the penal system. However, the current penal system does not fully guarantee comprehensive justice. This definition requires certain conditions that establish restorative justice as a fundamental value in responding to criminal cases. This requires a balanced focus between the interests of offenders and victims, as well as considering the social impact of resolving criminal cases.¹³

Legally, this approach is contrary to the provisions of criminal law and criminal procedure law in the Criminal Procedure Code, which do not explicitly regulate the inclusion of peace in the criminal case mechanism. In practice, based on data from the Indonesian National Police, it appears that in 2022, quite a number of traffic accident cases resulting in minor injuries were resolved through Alternative Dispute Resolution (ADR) or the application of restorative justice.¹⁴

According to Barda Nawawi Arief, the form of punishment that is often imposed by judges to criminal offenders is imprisonment, which is a criminal deprivation of liberty. However, along with the development of the purpose of punishment which prioritizes rehabilitation and a more humane approach, imprisonment has been criticized by various parties regarding its effectiveness and the negative impacts arising from its application.¹⁵

Therefore, the concept of restorative justice is important, in accordance with the perspective of Marian Liebmann, who generally defines it as a legal system that aims to restore the welfare of victims, perpetrators, and affected communities, while preventing further offenses or actions.¹⁶ Traffic accidents are criminal offenses regulated in Law Number 22 Year 2009 on Road Traffic and Transportation, specifically Article 310 paragraph (2), (3), and (4), based on the accident chronology.

From a legal perspective, resolving cases through restorative justice is more effective than conventional justice. This is because it allows victims to immediately obtain direct accountability through support and requires perpetrators to take responsibility by providing assistance. In line with the objectives of punishment, which include:¹⁷

1. Preventing the occurrence or recurrence of criminal acts, so as to provide a deterrent effect for the perpetrators and the community.
2. Resolve conflicts arising from criminal offenses, restore balance, and foster a sense of peace in society.
3. Offer opportunities for offenders to seek forgiveness and alleviate their guilt.

Regarding legal liability for criminal offenses that violate Article 310 paragraph (2) of Law Number 22 Year 2009 concerning Road Traffic and Transportation, the following components need to be considered:¹⁸

- a. Anyone. The term "whoever" includes individuals, communities, groups of people, or legal entities that act as legal subjects in a criminal case, as they have rights and obligations within the legal system.
- b. Negligence results in a traffic accident. As a result of their negligence, the victim suffers minor injuries, serious injuries and death.

Restorative justice aims to resolve conflicts by involving the most affected parties, including victims, perpetrators and their respective communities, while prioritizing their interests.¹⁹ Restorative justice emphasizes human rights and recognizes the consequences of social injustice, and seeks to correct them in practical ways, rather than focusing solely on formal or legal justice for perpetrators. Restorative justice also seeks to restore people's sense of security, self-worth, dignity, and most importantly, a sense of control over their own lives.

From a philosophical point of view, the implementation of restorative justice requires the active involvement of the conflicting parties through mediation. It aims to address both tangible and intangible harms through restitution or compensation. Restorative justice seeks to return the situation to the way it was before the damage or crime occurred by

involving the most influential parties involved, namely the victim, offender, and community, in seeking a fair and balanced settlement for all parties. This approach is an appropriate way to achieve the principles of simplicity, speed, and low cost, as well as ensuring the fulfillment of legal certainty and social justice.²⁰

From a sociological perspective, the application of restorative justice has a positive impact on society and the state, providing the following benefits to society:²¹

- a) Serves as a deterrent to prevent the recurrence of criminal acts.
- b) Restoring the balance of society.
- c) Foster a sense of peace in society.
- d) Implement a settlement process based on the principles of simplicity, speed and affordability, thus facilitating community involvement.
- e) Reducing community stigma associated with offenders.
- f) Empower the community to resolve cases peacefully and foster self-reliance.

For the state, restorative justice provides the following benefits:²⁴

- a) Reduce the burden on the state's financial budget.
- b) Reduce pressure on prison capacity.
- c) Relieve the workload of law enforcement officials

From the perspective of implementing restorative justice, the main goal is to restore or repair the situation to its original state, promoting peace, justice and well-being for both victims and offenders.²³ this approach aims to foster harmony in society for the future. Essentially, restorative justice focuses on holding offenders accountable to repair the damage caused by their actions. This approach also provides an opportunity for the accused to show genuine remorse and responsibility for the harm caused, in addition to fostering constructive guilt. However, the extent of these measures depends on the severity of the crime and the assessment of the circumstances, as well as the ability of the offender's family to educate and nurture them.²⁴

4) CONCLUSIONS

There has been a significant shift in the concept of punishment in the realm of criminal law, moving from the traditional retributive approach to the modern restorative approach. In the Indonesian context, this shift is referred to as the concept of daad-daderstrafrecht or the balance of interests model. The concept of punishment now emphasizes the needs of victims and society, which has become an issue not only in Indonesia but also at the international level. Restorative justice offers an approach that recognizes and seeks to meet these needs. It is a conceptual framework that responds to evolving patterns of criminal justice by emphasizing the importance of involving victims and communities, who may feel marginalized within the existing criminal justice system. Restorative justice is a practical process that aims to create harmony and restore balance in social relationships.

Its acceptance and functionalization is primarily focused on improving the resolution of social problems through the legal system. When positive law alone fails to effectively resolve social problems and instead exacerbates social tensions, a more functional approach is needed that can achieve substantial goals. This perspective has consequences for legal approaches, especially when positive law does not explicitly address certain matters.

In this context, investigators, public prosecutors, judges and legal advisors (advocates) play an important role in applying the law dynamically, transitioning from a formal-rational approach to a substantive-rational approach. Law enforcement officials should consider adopting a restorative justice approach, particularly in traffic accident cases, by fostering mutual respect between victims and perpetrators. This approach aims to prevent future conflicts and disputes. Restorative justice prioritizes the establishment of a sense of family and encourages the parties involved to reach an amicable settlement.

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