

Enforcement of Restorative Justice in Traffic Crime Cases Which Causes Death



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ABSTRACT: This scientific work will discuss the enforcement of restorative justice in cases of traffic crimes that result in death. The formulation of the problem of law enforcement principles based on restorative justice for traffic accidents that result in human casualties and the principle of justice is in accordance with the principles of restorative justice for traffic accidents that result in human casualties. The research method used is normative research method with a statutory approach, conceptual and case. The results of the study show the application of the concept of restorative justice in the practice of crime prevention in Indonesia, especially when changes to criminal procedural law or criminal law in general are not a priority for legislation, but the concept of restorative justice in Indonesia in the context of criminal law does not yet have a specific forum, and in applying in the process of investigation, prosecution and examination in court as well as restorative justice returns the conflict to the parties who are most known for their influence-victims, perpetrators and the interests of their communities and give priority to their interests. Then attempt a restorative justice approach. but on purpose, namely creating harmony or restoring balance in social relations. thus, the acceptance and functionalization of restorative justice is more on the function of law in solving social problems better.

KEYWORDS: Traffic Crime; Restorative Justice; Legal Protection

I. INTRODUCTION

In Indonesia, traffic is getting congested, there will be an increase in both two-wheeled and four-wheeled transportation, so road users, especially when driving, must obey the traffic rules that apply in Indonesia. It is expected that obedience to traffic rules can be coveted to minimize the number of accidents that occur. A traffic accident is a condition that road users do not want, but if it happens, it cannot be avoided either intentionally and/or unintentionally by road users which results in other people being injured and/or dead. by law, as stipulated in the provisions of Article 230 of Law Number 22 of 2009 concerning Road Traffic and Transportation.

The law has a goal to protect humans either actively or passively.¹ The definition of active is that the judicial process is humane and carried out in a fair manner, but active means that the judicial process is carried out fairly and not arbitrarily. From these aims, the judicial process for perpetrators of criminal acts of traffic accidents resulting in victims who are injured and/or dead must also be considered from a humane perspective and a sense of justice.

The implementation of traffic on the road must pay attention to several factors, namely as follows:²

1. Road traffic and transportation security, namely a situation where the freedom of every person, goods and/or vehicle from interference with unlawful acts and fear in using traffic;
2. Safety in traffic and road transportation, namely the condition in which everyone is protected from the risk of accidents during traffic that cause humans, vehicles, roads and the environment;
3. Road traffic and transportation order, namely a condition of traffic that takes place regularly in accordance with the rights and obligations of all users of road traffic and transportation;
4. Smooth road traffic and transportation, namely a condition of traffic and the use of transportation that is free from obstacles and congestion on the road.

From the understanding as explained above, it will provide a more orderly and orderly traffic process, therefore it requires self-awareness to better comply with traffic regulations for people who use road facilities.

Each community has a different level of awareness of the law, including carelessness and negligence, and those who obey traffic rules. This is often found on the streets using roads to carry out transportation activities where traffic accidents occur either intentionally or unintentionally.

¹ Dudu Duswara, 2010, Pengantar Ilmu Hukum Sebuah Sketsa, Cetakan ke III, Bandung: Refika Aditama, h. 28.

² Sadjijono, 2008, Seri Hukum Kepolisian, Polri dan Good Governance, Surabaya: Mediatama, h. 22.

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There are a lot of traffic accidents, so a law enforcement process is needed by mediating between the victim and the perpetrator through an agreement made between the two parties. Therefore, from this incident it is possible that the criminal act of a traffic accident resulting in a victim who died can be carried out by means of mediation or restorative justice.

The existence of settlement of cases outside the court through restorative justice is a new perspective studied from theoretical and/or practical aspects. Examining the perspective in practice, restorative justice will have a correlation with achievements in justice. Further examining the cases in court, there are various kinds of cases that are a burden and increasing state expenditure, this is not in accordance with the principles of simple, fast and low-cost justice without having to risk achieving the objectives of the judiciary, namely legal certainty, expediency and justice.

The advantage of resolving cases outside the court with Alternative Dispute Resolution (ADR) is that decisions made by the parties themselves (win-win solution) give more sense of justice. However, in the examination of peace cases, generally only civil cases, however, as the development of criminal cases must be resolved out of court.

Thus the Indonesian National Police gives the authority to take any action, including the settlement of criminal cases outside the court, as long as the agreement between the perpetrator and the victim or the victim's family is fulfilled. The discretionary authority of the Police based on the provisions of Article 16 paragraph (2) in conjunction with Article 18 paragraph (10) of Law Number 02 of 2002 concerning the State Police of the Republic of Indonesia states "in matters that are very necessary and urgent, for the public interest police officials can act according to their respective judgments. -Each of these can be carried out in conditions that are absolutely necessary by upholding the code of ethics of the police profession," so that the completion of criminal cases (crime clearance) by the police requires procedures in a transparent and accountable manner, with the following conditions:

1. Prioritize the interests of the victim, so as not to be harmed;
2. Involve the social system of the community and/or the Police and Community Partnership Forum (FKPM);
3. There is very strict participation in solving criminal offenses in these circumstances.

Settlement of traffic accident investigators at the National Police as investigators in these accidents, both those that have resulted in victims dying and/or experiencing physical disabilities, have attempted to use mediation in resolving these traffic accident cases, as is the case with University of Indonesia students who died and accused by the police.

The police try to mediate by holding a meeting between the perpetrator and the victim and/or the victim's family to make peace on the conditions that an agreement has been made between the perpetrator and the victim and/or the victim's family. The context of the investigation with restorative justice, the police are the gatekeepers of the criminal justice system. This was stated by Donald Black, namely the role of investigation and investigation of criminal acts, providing the placement of police officers who have a relationship with most of the common or common crimes. Usually the police act reactively rather than proactively, it is up to the community to make complaints and/or reports on allegations of a criminal act changing the investigative model from one that has a punitive nature (punishing) to a restorative one (recovery of perpetrators and victims), namely a change from just technique, but tradition investigation. Therefore, it takes a very long process to adapt.

For example, the concept of including victims (victims' participation scheme) in the investigation and investigation process is not an easy thing because prosecution changes from a pattern that is generally closed to an open one. The concept of including victims (victims' participation scheme) is difficult to define, namely to what extent the victims' participation scheme is possible even though overall it has the potential to provide restorative benefits, especially recovery and rehabilitation of victims.

Based on the background described above, the author concludes and chooses the title "Enforcement of Restorative Justice in Traffic Crime Cases That Cause Death".

II. PROBLEM FORMULATION

The principles of law enforcement based on restorative justice for traffic accidents that result in human casualties and the principles of justice are in accordance with the principles of restorative justice for traffic accidents that result in human casualties.

III. RESEARCH METHODS

Legal research in this paper uses a problem approach in the form of a statute approach, a conceptual approach and a case approach. The statute approach is carried out by examining the material content contained in the statutory regulations as well as studying the ontological basis, philosophical basis, and the legal ratio of the statutory regulations. While the conceptual approach (conceptual approach) is carried out by studying the views and doctrines of the science of law that gave rise to understanding, concepts and legal principles that are relevant to the legal issues studied.

IV. DISCUSSION

A. Principles of Law Enforcement Based on Restorative Justice for Traffic Accidents Resulting in Human Victims

Positive law in the field of crime in Indonesia, of course, cannot be tolerated and/or wait until there is a change in law that makes it possible to implement the concept of restorative justice. This means that practically one cannot rely on the existence of positive

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law beforehand which provides a basis for the legitimacy of applying the concept of restorative justice in crime prevention practices in Indonesia, especially when changes to criminal procedural law or criminal law are generally not a priority for legislation. Ignoring the concept of restorative justice in the Indonesian criminal justice system means neglecting victims and their families and members of the community affected by the crime. That is, the criminal justice system is not balanced in seeing the three parties related to the occurrence of crime, besides still being retributive (retributive system), which focuses on punishing the perpetrators and does not try to resolve the occurrence of crime and its consequences as a societal problem.

Satjipto Rahardjo argued that at this time there were many doctrines which gave indications of how small the corners were within the realm of law, apart from the breadth of order, and had even stated that order was without law. This condition allows the inspiration of the community itself in realizing and/or giving birth to social norms. Where the rule appears by itself as having a much faster speed than creating law through the legislature which takes years. This statement proves that in creating order the existence of law is not everything, especially law in the sense of the formation of state power specifically for that (legislative).³ Therefore, an important issue that needs to be paid attention to is dominating the operation of the concept of restorative justice in Indonesia in the context of criminal law where there is no specific forum, as well as in applying it in the process of investigation, prosecution and examination in court.

The traffic accident crime is classified as an ordinary offense so that even though there are efforts to reconcile from both parties, it still cannot cancel the criminal charge, especially if the victim dies. The existence of this reconciliation effort can be the basis for the judge's considerations in deciding a mitigating or aggravating decision.

Providing compensation is nothing but to develop justice and welfare for victims as members of society and the benchmark for its implementation is by giving opportunities to victims to develop their rights and obligations as human beings. On that basis, programs for providing compensation to victims should be a combination of efforts from various approaches, both approaches in the field of social welfare, humanitarian approaches and approaches to the criminal justice system.

So accountability in criminal acts, especially criminal acts of traffic accidents is needed. With the application of restorative justice, solving the problem of conflict between the two parties can be resolved peacefully, compensation is a point of concern in solving the responsibility for criminal acts so that the function of law is created as a means of social control and as a means of resolving disputes.

Initially, restorative justice drew inspiration from community justice or justice and/or community justice which is still used in several non-western cultures, more specifically to indigenous peoples (indigenous population). The development of restorative justice is driven by thoughts about equality and community relations, however, the concept of restorative justice is used in several traditions of indigenous peoples in Indonesia.

Black's Law Dictionary emphasizes that restorative justice is an alternative sanction for crime that focuses more on repairing actions that are harmful to other communities, bringing victims together and/or asking for forms of perpetrator responsibility for their actions. This restorative justice uses a balance approach, by providing limiting results and centering on the perpetrator's responsibilities and providing assistance to victims. The perpetrator may be ordered to provide damages to perform a service to the community, or to make changes in some way at the behest of law enforcement.

"an alternative delinquency sanction that focuses on repairing the harm done, meeting the victim's need, and holding the offender responsible for his or her actions. Restorative justice sanctions use a balanced approach, producing the least restrictive disposition while stressing the offender's accountability and providing relief to the victim. The offender may be ordered to make restitution, to perform community service, or to make amends in some other way that the court orders".⁴

Marit de Haan and Tine Destrooper stated that restorative justice (or often also called "reparative justice") or in Indonesian terms can be translated as "restorative or reparative justice or justice" is an approach to justice that focuses on the needs of victims and perpetrators, as well as the people involved, not satisfying abstract legal principles or punishing perpetrators. Victims take an active role in the process, while perpetrators are encouraged to take responsibility for their actions, "to repair the harm they have done by apologizing, returning stolen money, or community service. Restorative involves both victims and perpetrators and focuses on their needs personally."⁵

In addition, it provides assistance to perpetrators to avoid future offences. This is based on a theory of justice which considers crimes and violations to be violations against individuals or society, not the state. Restorative justice that fosters dialogue between victims and perpetrators shows the highest level of victim satisfaction and perpetrator accountability.

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³ Satjipto Rahardjo, 2007, *Biarkan Hukum Mengalir*, Catatan Kritis Tentang Pergulatan Manusia dan Hukum, Jakarta: Kompas, h. 29.

⁴ Bryan A. Garner, ed., 2004, *Black's Law Dictionary*, Eight Edition, United State of America: West a Thomson Business, h. 1340.

⁵ Marit de Haan and Tine Destrooper, "Using Restorative Justice to Rethink The Temporality of Transition in Chile", *The International Journal of Restorative Justice*, 2021 vol. 4(2) p. 206-228..

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*provides help for the offender in order to avoid future offenses. It is based on a theory of justice that considers crime and wrongdoing to be an offense against an individual or community, rather than the state. Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability*⁶

Based on this definition, it can be understood that restorative justice is a design of criminal justice that takes into account the interests or needs of victims, families and affected communities on the basis of accountability of the perpetrators of criminal acts. Thus, criminal justice is not solely aimed at punishing or holding perpetrators accountable, but the needs or interests of victims receive balanced attention in the judicial process which can be confirmed through court decisions.

In this case, the restorative justice approach is still lacking in Indonesia, especially in Jakarta for traffic accidents which often claim victims. According to Kakorlantas Polri, from a number of cases, only a small part of the efforts made were restorative justice. This was because the only efforts that were often made were positive law approaches because the police carried out their application through legal thinking, which was only related to the law, most of the victims and families of the victims were mostly not want to take the penal mediation route, namely a meeting between the perpetrator and the victim so that the police as law enforcement officers must carry out their duties in accordance with applicable regulations.

Settlement of criminal cases, especially in cases of traffic accidents involving children through a restorative justice approach, is a form of law that is currently living in society (living law). Regarding the development of living law in society (living law), Roscoe Pound explained that law is a tool for updating (engineering) society (law as a tool of social engineering).

Based on the description above, it can be said that the settlement of traffic accident cases through a restorative justice approach is a legal value currently living in society (living law), which is currently effective in regulating the order of people's lives. In addition, specifically for criminal cases committed by children, one of the instruments that can be carried out in the implementation of diversion against juvenile criminal cases is to use a restorative justice approach.

B. The Principle of Justice Is In Accordance With The Principles Of Restorative Justice For Traffic Accidents That Result In Human Victims

Restorative justice or often translated as restorative justice is an approach model that emerged in the 1960s in efforts to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach emphasizes the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. Despite the fact that this approach is still being debated theoretically, this view has in fact developed and influenced many legal policies and practices in various countries.

James Dignan describes the historical side of restorative justice, saying that *the term restorative justice is usually attributed to Albert Eglash, who sought to differentiate between what he saw as three distinct forms of criminal justice. The first is concerned with "retributive justice", in which the primary emphasis is on punishing offenders for what they have done. The second relates to what he called "distributive justice" in which the primary emphasis is on the rehabilitation of offenders. The third is concerned with "restorative justice", which he broadly equated with the principle of restitution.*⁷ Because of this, discussions about restorative justice cannot be separated from a person named Albert Eglash who in 1977 divided into three categories of criminal justice, namely retributive justice, distributive justice, and restorative justice. In short, the concept of restorative justice was first introduced by Albert Eglash.

However, long before Albert Eglash put forward his ideas, ancient Arab, Greek, Roman and Hindustani civilizations and traditions had actually known special restorative justice in the crime of killing. Even though at that time the term restorative justice was not used, at least there was a restorative approach. Likewise among the Buddhist, Taoist and Confucian communities who long ago have pushed for restorative justice in resolving their legal problems, through the motto *"he who atones is forgiven"* means *he who redeems, is forgiven*. Confirmed by John Braithwaite, *restorative justice is grounded in traditions of justice from the ancient Arab, Greek, and Roman civilization, Indian Hindus, Taoist, and Confucian that accepted a restorative approach even to homicide, for whom "he who atones forgiven"*⁸

Handling criminal cases with a restorative justice approach offers different views and approaches in understanding and dealing with a crime, as illustrated by the definition put forward by Dignan, *Restorative justice is a new framework for responding to wrongdoing and conflict that is rapidly gaining acceptance and support by educational, legal, social work, and counseling professionals and community groups. Restorative justice is a valued-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community.*⁹

In relation to the position of the perpetrator and the victim, there are a number of weaknesses in the various models of settlement of cases in the criminal justice system, namely:

- a) That the victim, who should be present as a party who is the center of a mechanism that operates outside of the perpetrator, does not seem to be part of the various existing mechanisms;

⁶ *ibid.*

⁷ James Dignan, 2005, *Understanding Victim and Restorative justice*, New York: Open University Press, h. 87.

⁸ John Braithwaite, 1998, *Restorative Justice*, dalam Michael Tonry, *The Handbook of Crime and Punishment*, New York: Oxford University Press, h. 323.

⁹ *ibid.*, h. 94.

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- b) The presence of victims causes the consideration that the application of a restorative justice approach cannot be applied to all types of criminal acts;
- c) The desire of victims to voluntarily participate is a challenge in handling criminal cases using a restorative justice approach. In the case of a traffic accident that causes the death of the victim, it seems that a meeting between the perpetrator and the victim's family can be held as long as this can be facilitated by a mediator.

Restorative justice is a sentencing concept, but as a sentencing concept it is not only limited to criminal law provisions (formal and material). Restorative justice must also be observed from the perspective of criminology and the penal system. From the existing reality, the existing penal system does not fully guarantee integrated justice, namely justice.

This definition requires the existence of certain conditions that place restorative justice as the basic value used in responding to a criminal case. In this case, it is required to balance the focus of attention between the interests of the perpetrator and the victim and also take into account the impact of the settlement of the criminal case on society.

Juridically it is considered contrary to the provisions of criminal law and criminal procedural law in the Criminal Procedure Code which does not regulate the existence of amicable settlement in the mechanism of criminal cases, factually in the Police of the Republic of Indonesia based on data contained in the Police that in 2022 the total number of traffic accidents with victims of minor injuries committed by the community which are resolved through ADR or in the application of restorative justice.

According to Barda Nawawi Arief stated that with regard to criminal sanctions, the type of deprivation of liberty in the form of imprisonment is a type of punishment that is often applied to perpetrators of criminal acts by judges, with the development of criminal objectives which no longer have a focus on efforts that give suffering but are more oriented to improvement as an effort towards being more humane, because of that imprisonment has generated a lot of criticism from many fields related to the problem of effectiveness and the negative impact that arises with the application of imprisonment.¹⁰

Therefore, the concept of restorative justice is needed which, based on Marian Liebmann's opinion, is generally interpreted as restorative justice as a legal system that has the goal of restoring the welfare of victims, perpetrators and communities damaged by crime, and to provide prevention of violations and/or further action.¹¹ Traffic accidents are criminal acts regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation, Article 310 paragraph (2), paragraph (3) and paragraph (4) based on the chronology of the accidents that occurred.

From a juridical perspective, resolving cases with restorative justice is more effective than conventional justice. Because the victim immediately gets direct accountability by providing support to the victim and requires the perpetrator to be responsible by providing assistance.

In accordance with the purpose of punishment, namely:

1. Preventing the commission of a crime or repetition of a crime. Thus providing a deterrent effect for perpetrators and society.
2. Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society.
3. Release the guilt of the convict by forgiving the offender.

As for legal liability for criminal acts for violating Article 310 paragraph (2) of Law Number 22 of 2009 concerning the Law on Road Transport Traffic with the following elements:

a. Whoever

Whoever person in this case is a legal subject as a supporter of rights and obligations can be an individual, community, group of people or legal entity that becomes a legal subject in a criminal case.

b. Due to negligence resulted in a traffic accident

As a result of his negligence, the victim suffered minor injuries, serious injuries and died.

Restorative justice returns conflict to the parties most affected-victims, perpetrators and the interests of their communities and gives priority to their interests. Restorative justice also emphasizes human rights and the need to recognize the effects of social injustice and in simple ways to redress them rather than simply giving the perpetrators formal or legal justice and victims not getting any justice. Then, restorative justice also seeks to restore the victim's security, personal respect, dignity, and more importantly, a sense of control.

Viewed from a philosophical point of view, the application of restorative justice provides an active role for parties in conflict through mediation. Against material and immaterial losses in the form of restitution or compensation. Restorative justice is aimed at restoring the situation to how it was before the damage or crime occurred by involving the most influential parties, namely victims, perpetrators and the community, to seek a fair and balanced solution for all parties. So that the function of restorative justice as an accelerator from the principle of simple justice, fast and low cost guarantees the fulfillment of legal certainty and social justice.

Viewed from a sociological perspective, the application of restorative justice has a positive impact on society and the state. For the community, namely:

¹⁰ Barda Nawawi Arief, 2010, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Yogyakarta: Genta Publishing, h. 139.

¹¹ Marian Liebmann, 2007, *Restorative Justice: How It Work*, London and Philadelphia: Jessica Kingsley Publisers, h. 25.

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- a) Creating a deterrent effect so that no repetition of criminal acts occurs;
- b) Restore the balance of society;
- c) Bringing a sense of peace to the community;
- d) The settlement process is based on the principle of simple justice, fast and low cost, making it easier for the community;
- e) Removing the stigma of the perpetrator in society; And
- f) Empowering the community to resolve cases in a peaceful way (making the community more independent). For countries namely:
 - a) Reducing the burden on the state financial budget;
 - b) Reducing the number of prison capacity; And
 - c) Reducing the workload of law enforcement.

Seeing from the process of implementing restorative justice, it seeks to restore or restore the situation as before by promoting peace and justice, welfare for victims and perpetrators so that harmony can be created for society in the future.

Basically, restorative justice is aimed at making the offender responsible for repairing the losses incurred by his mistakes and giving the defendant the opportunity to prove his totality and responsibility for the losses incurred in addition to constructive guilt. But this really depends on the seriousness of the crime and seeing the circumstances and the ability of the child's family to educate and nurture the child.

CONCLUSIONS

There is a paradigm shift in the concept of punishment from classical criminal law to modern criminal law, this change in the Indonesian context from retributive to restorative, which in Muladi's reading is referred to as the *daad-daderstrafrecht* concept or the balance of interests model, the concept of punishment is more oriented towards victims and society become an issue that is no longer in the country of Indonesia, but has reached the international level. Restorative justice offers an approach that assumes that these demands can be fulfilled. Restorative justice is a concept of thinking that responds to the development of criminal justice patterns by imposing the need for involvement of victims and the community who feel they have been thrown out of the current criminal justice system. Restorative justice is a concept that will be used through the actual process. So as to be able to map the process of a restorative justice approach, but on purpose, namely creating harmony or restoring balance in social relations. Thus, the acceptance and functionalization of restorative justice is more on the function of law in solving social problems better. When laws are obeyed, but do not solve social problems, instead exacerbate social tensions, it is not an exaggeration if the law is pushed to the margins and replaced by more functional ones to achieve more substantial goals. Such a position has consequences for the approach to law, especially when positive law has not been explicitly regulated. In this context, investigators, public prosecutors, judges and legal advisers (advocates) are important actors in dynamically working law from a formal-rational to substantive-rational approach.

Law enforcers need to consider a restorative justice approach in traffic accident cases based on mutual respect between victims and perpetrators so that there will be no buildup/disputes that occur in the future. Restorative justice is justice that prioritizes kinship between newspapers and perpetrators to agree to make peace.

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