

# The Nature of *Restorative Justice* in the Perspective of the Settlement of Traffic Accidents

Naima Akaseh.<sup>1</sup>, Hambali Talib<sup>2</sup>, A. Muin Fahmal<sup>2</sup> & Nasrullah Arsyad<sup>2</sup>

<sup>1</sup>Doctoral student in Law, Universitas Muslim Indonesia

<sup>2</sup>Faculty of law, Universitas Muslim Indonesia

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## ABSTRACT

The purpose of this study is to analyze the nature of *restorative justice* from the perspective of resolving traffic accidents and to examine and get an overview of the benefits of applying *restorative justice* for the parties involved in traffic accidents. This type of research is a combination of normative legal research and empirical legal research. The results of the study show that the essence of restorative justice in the settlement of traffic accidents is to realize justice and benefit for the parties involved, namely the perpetrators, victims and the community. The application of a restorative justice approach to the settlement of traffic accident crimes carried out by Polri Investigators through the Alternative Dispute Resolution (ADR) concept, namely resolving cases without going through the criminal justice system based on the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations.

**KEYWORDS:** Restorative Justice; Accident; Traffic

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## I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia which was ratified on August 18, 1945, provides a legal form for the implementation of life as an independent nation. It is stated in Article 1 paragraph (3) that the fourth amendment to the 1945 Constitution of the Republic of Indonesia requires that the State of the Republic of Indonesia whose main organizational arrangements are formulated in the law stipulates that "the State of Indonesia is the State of Law".

A state-based on law uses the rule of law to achieve the goals of state life.<sup>1</sup> The rule of law is a country whose administration of government power is based on law. In general, a legal state like Indonesia gives all its trust to state power which proceeds through laws that are considered good and fair for all parts of the country.<sup>2</sup>

Law is a system that has its characteristics and characteristics and is a tool to regulate human life so that it becomes orderly. Law in its development is a dynamic growth process, this is based on the belief that the law occurs as a plan from a certain situation towards a goal to be achieved.<sup>3</sup> The main purpose of the law is to create order and security whose keyword is the welfare of the people. The law will be effective if it is accepted and following the law that lives in society. As the adage "*Ibius ubi societas*", where there is law in society.<sup>4</sup>

Another opinion states that if the law is already in place, then there are sufficient legal means to be relied on to take action against any violations or to protect the interests of the community. The rule of law that is considered close to justice is a requirement that the law must be able to reflect the demands of the public conscience about a sense of justice. There has been a shift in principles and conceptions from the rule of law to the state of the law which puts the laws made by the government as a measure of truth.<sup>5</sup> In a law like this, every unfair government action is justified by the act of the law through the use of attribution of authority so that the law is placed as a means of justification.

In the development of law, a paradigm emerged that some people who understand the law want a change in the mindset of law enforcers so that in enforcing the law it does not merely refer to the sound and text of the Act,

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<sup>1</sup>Adhayanto, O. (2015). Implementasi Nilai-Nilai Pancasila Sebagai Dasar Negara Dalam Pembentukan Peraturan Perundang-Undangan. *Jurnal Ilmu Hukum*, 6(2), 166-174.

<sup>2</sup>Nugroho, H. (2012). Demokrasi dan Demokratisasi: Sebuah Kerangka Konseptual untuk Memahami Dinamika Sosial-Politik di Indonesia. *Jurnal Pemikiran Sosiologi*, 1(1), 1-15.

<sup>3</sup>Hambali, A. R. (2020). Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana. *Kalabirang Law Journal*, 2(1), 69-77.

<sup>4</sup>Setiadi, W. (2012). Pembangunan Hukum dalam Rangka Peningkatan Supremasi Hukum. *Jurnal RechtsVinding: Media Pembinaan Hukum Nasional*, 1(1), 1-15.

<sup>5</sup>Turiman, T. (2010). Memahami Hukum Progresif Prof Satjipto Rahardjo Dalam Paradigma "Thawaf". *Jurnal Hukum Progresif*, 1-72.

but it is hoped that there will be a breakthrough in other ways of thinking because the law work based on the guidance of a map that was presented to him.<sup>6</sup> The map determines how a legal system perceives its function and how the law will then carry out its work. Changes in the guide map also lead to changes in the function and operation of the law.

Law enforcement is an attempt to tackle crime rationally, fulfil a sense of justice and be efficient. In the context of tackling crime through various means that can be provided to perpetrators in the form of criminal law and non-criminal law facilities that can be integrated.<sup>7</sup> Law enforcement can guarantee legal certainty, order and legal protection if various dimensions of legal life always maintain harmony, balance and harmony based on actual values that exist in a civilized society.<sup>8</sup>

The hopes of some of the people who want the way of thinking of law enforcers that were previously formalistic and legalistic, it seems that law enforcers, especially judges, have heard them in several decisions that dare to break through the statutory provisions that have been considered unfair, especially to justice seekers who crave justice. the operation of the law by providing justice to everyone without exception, these judges' decisions are currently popular with the term progressive law and this is what many justice seekers covet and scream at seeing the text of the legislation which is considered not to provide a sense of justice.

From some of the opinions above, according to the author, it is time for law enforcement against minor criminal acts including traffic accidents not only to apply laws and regulations that are punishing in nature but to prioritize actions aimed at restoring good conditions for perpetrators and victims involved in traffic accidents.<sup>9</sup> It is necessary to analyze legal arrangements through mediation towards the settlement of traffic accidents which aims to provide convenience to the parties involved in traffic accidents to take an easier legal route.

The method of resolving cases of traffic accidents that so far has prioritized a punitive investigation process is no longer relevant. Therefore, the application of *restorative justice* is considered more appropriate to provide satisfaction to all parties, namely victims, perpetrators and the community.<sup>10</sup>

The increasing number of traffic accidents on the highway that has occurred recently which resulted in the death of the victim has left a black sheet in the traffic law. In every case of a traffic accident that occurs on the highway, of course, it has legal consequences for the driver of the vehicle. People often view that traffic accidents that cause injuries and deaths are always the absolute fault of the driver of the vehicle concerned.<sup>11</sup> Meanwhile, according to the applicable legal theory that a person's mistake is seen from the factors causing the occurrence, what factors caused the traffic accident to occur. This can be revealed from the chronology of events, testimonies including eyewitnesses who saw the accident.<sup>12</sup>

Legislation that regulates more specifically, in detail and firmly regarding traffic on highways/tolls and traffic accidents, including regulating negligence/negligence in driving a vehicle to cause injury and death, namely Law Number 22 of 2009 concerning Road Traffic and Transportation.<sup>13</sup>

Based on the development of national traffic and transportation, the author thinks that road traffic and transportation have a strategic role in supporting national development and integration as part of efforts to promote public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. Road transportation as part of the national transportation system must develop its potential and role to realize security, safety, order and smooth traffic and road transportation in the context of supporting economic development and regional development.

## II. RESEARCH METHODS

**This** type of research is a combination of normative legal research and empirical legal research, which views law as a socio-empirical phenomenon observed in inexperience. In other words, it is examining the applicable legal provisions and what is happening in reality in society.

This research study is carried out in three layers of legal science, namely the legal dogmatic layer, legal theory and legal philosophy. The dogmatic layer examines the description of the legal provisions governing the procedure for resolving traffic accident cases, the legal theory layer examines several legal theories related to

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<sup>6</sup>Alfiantoro, H. (2019). Konstruksi Penegakan Hukum Pidana Bermodel Keseimbangan Kepentingan Daad-Dader Strafrecht (Kajian Kritis Membangun Paradigma Jaksa Progresif di Era Digital). *FENOMENA*, 17(1), 1963-1979.

<sup>7</sup>Ariyanti, V. (2019). Kebijakan Penegakan Hukum dalam Sistem Peradilan Pidana Indonesia. *Jurnal Yuridis*, 6(2), 33-54.

<sup>8</sup>Suwandoko, S., & Rihardi, S. A. (2020). Legal Reform for the Fulfilment of Disabilities Human Rights. *Unnes Law Journal*, 6(2), 217-224.

<sup>9</sup>Rochman, F., & Djanggih, H. (2020). Efektivitas Fungsi Kepolisian Dalam Penegakan Hukum Tindak Pidana Kecelakaan Lalu Lintas. *Indonesian Journal of Criminal Law*, 2(2), 76-92.

<sup>10</sup>Rahardi, P. A. (2017). Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Melalui Pendekatan Alternative Dispute Resolution. *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, 15(1), 89-103.

<sup>11</sup>Saputra, A. D. (2018). Studi Tingkat Kecelakaan Lalu Lintas Jalan di Indonesia Berdasarkan Data KNKT (Komite Nasional Keselamatan Transportasi) dari Tahun 2007-2016. *Warta Penelitian Perhubungan*, 29(2), 179-190.

<sup>12</sup>Woocher, F. D. (1976). Did your eyes deceive you--expert psychological testimony on the unreliability of eyewitness identification. *Stan. L. Rev.*, 29, 969.

<sup>13</sup>Afzal, M., & Hidayat, R. (2018). Penyelesaian Perkara Kecelakaan Lalu Lintas Di Jalan Raya. *Jurnal Ilmiah Mandala Education*, 4(1), 341-347.

policies and alternative solutions, then the legal philosophy layer examines and examines in depth the meaning and benefits of applying restorative justice in solving traffic accident cases. The research locations are Palu City, Donggala Regency and Banggai Regency, Central Sulawesi Province.

### III. DISCUSSION

Along with advances in technology and transportation in Indonesia, which is followed by the development of civilization of road users. So the government through the legislature drafted laws and regulations governing orderly traffic on the highway and in 2009 the Law of the Republic of Indonesia Number 22 the Year 2009 concerning Road Traffic and Transportation was enacted until now. Therefore, the enactment of Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation replacing Law Number 14 of 1992, has brought important changes to the regulation of the national transportation system in Indonesia.

In this Law, the development of the field of road traffic and transportation is carried out jointly by all relevant agencies, especially:

- a. Government affairs in the field of road infrastructure are carried out by the Ministry responsible for the road sector;
- b. Government affairs in the field of traffic and road transportation facilities and infrastructure are carried out by the Ministry who is responsible for the field of traffic and road transportation facilities and infrastructure;
- c. Government affairs in the field of road traffic and transportation industry development are carried out by the Ministry responsible for the industrial sector;
- d. Government affairs in the field of traffic technology development and road transportation are carried out by the Ministry responsible for technology, and;
- e. Government affairs in the field of registration and identification of motorized vehicles and drivers, law enforcement, operations, traffic management and engineering, and traffic education are carried out by the Indonesian National Police.

The division of the guidance authority is intended to make the duties and responsibilities of each supervisor in the field of traffic and road transportation more clear and transparent so that the implementation of road traffic and transportation can be carried out properly and efficiently and can be accounted for. The principles and objectives of the Law of the Republic of Indonesia Number 22 of 2009 are also formulated, in addition to creating safe, safe, orderly and smooth traffic and road transportation, as well as being integrated with other modes of transportation, also has the aim of encouraging the national economy, realizing prosperity, people, the unity and integrity of the nation, and uphold the dignity of the nation. Therefore, the security aspect is a major concern in implementing traffic and road transport regulations. The Law of the Republic of Indonesia Number 22 of 2009 also emphasizes the realization of traffic ethics that reflect the nation's culture through efforts to develop, guide and educate traffic from an early age and which is carried out continuously. It is an empirical fact that a massive and continuous traffic order campaign is needed to solve today's increasingly complex traffic problems. An orderly traffic campaign is needed to provide solutions for several interests, namely:

1. The public's need for comfort and safety in driving on the highway.
2. Low community discipline in driving.
3. The high rate of accidents on the highway.
4. Build public awareness.

Meanwhile, to deal with traffic problems, prevention of traffic accidents is carried out through the participation of stakeholders, community empowerment, law enforcement and global partnerships. Prevention of traffic accidents is carried out through short, medium and long term programs. In addition, to formulate preventive measures, a joint forum for traffic and road transport is carried out.

It is affirmed in the Law of the Republic of Indonesia Number 22 of 2009, that the regulation and application of sanctions for traffic violations are regulated more firmly. Minor violations are subject to criminal sanctions of imprisonment or relatively lighter fines. However, for serious violations and there is an element of intent, criminal sanctions are much heavier. This is intended to provide a deterrent effect for offenders. In addition to criminal sanctions, administrative sanctions for transportation companies are also regulated in the form of warnings, suspension of permits, revocation of driving licenses to drivers and fines. Threats regarding criminal and administrative sanctions are also imposed on officials or road organizers.

On the other hand, to improve the effectiveness of law enforcement, they applied a reward and punishment system (*reward and punishment*) in the form of incentives to officers who perform mainly officers who do a lot of action against traffic violations. However, as data on traffic accidents that occur as a result of

traffic violations reported at each Polres in the research location, the number of traffic accidents continues to increase along with the growth of motorized vehicles on the road.

The low level of public awareness in complying with traffic regulations is one of the biggest contributing factors to the occurrence of traffic accidents on the highway. The increasing number of deaths caused by road traffic accidents is increasingly concerning. Various efforts have been made by the National Police together with relevant agencies that are members of the traffic forum to reduce the death rate.

The increase in the number of motorized vehicles every year is difficult to control even though the government has implemented a progressive tax on motorized vehicle owners who own more than one four-wheeled motorized vehicle. The increase in the number of motorized vehicles on the highway automatically affects the incidence of traffic violations that result in traffic accidents.

According to data compiled by the KorlantasPolri Headquarters, throughout Indonesia, an average of three people die every hour due to road traffic accidents. This number is quite high because if it is accumulated every month, an average of 216 people dies due to traffic accidents. Meanwhile, based on data compiled by the author in the jurisdiction of the Central Sulawesi Regional Police, especially in the three Polres research locations, the average number of people who die every year due to traffic accidents is 160 people.

Various efforts are made by the relevant agencies jointly to overcome the very high number of traffic accidents every year. Comprehensive countermeasures through guidance, prevention, regulation and law enforcement. Coaching efforts are carried out through increasing the intensity of traffic education and legal counselling as well as developing human resources from an early age which is held at all levels of education from kindergarten to university.

Traffic accidents are unexpected and unintentional events involving vehicles or other road users that can cause casualties and/or property loss. Traffic accidents can happen anytime and anywhere, unpredictable. Not only cause trauma and injuries, but traffic accidents can cause victims to die.

The process of resolving traffic accidents is regulated in the Criminal Code and the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation. As stated in Article 63 paragraph (2) of the Criminal Code, namely: If an act is included in a general criminal rule and is also regulated in a special criminal rule, then the special rule is applied.

The settlement of cases carried out by investigators is not easy to implement according to the legal rules that govern it, because the parties involved in traffic accident cases prefer to resolve the case through a peace mechanism which is considered to be able to provide benefits to all parties, both perpetrators, victims and the community.

The change in the investigative model from being purely punitive towards the recovery of perpetrators and victims is a change that is more than just a technique but involves the culture of investigation. Therefore, it requires a long process to adapt, which seems to be irreversible.

The practice of resolving criminal cases through deliberation between perpetrators and victims and the people involved in it is a reality that exists in Indonesian society. In practice, this settlement mechanism is implemented with or without involving law enforcement. In practice, peace as the final result of the deliberation that occurs is the key to closing the problems that occur as if getting justification in the laws that live in society. This phenomenon is not only a problem in Indonesia. In several countries, policies have been made to answer these problems in the form of government programs or even policies in their regulations. These policies and programs are based on the traditional penal philosophy that frames it, known as restorative justice.

Restorative justice is a traditional sentencing philosophy that can be used as an approach in handling and resolving criminal cases that occur in society. So it is hoped that the results of the process can create justice that is felt by the perpetrators, victims and the community and answer various problems faced by the current criminal justice system.

Restorative justice based on article 1 number 6 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System is the settlement of criminal cases by involving the perpetrator, victim and family/victim, and other related parties to jointly seek a fair settlement with emphasizes restoration to its original state and not retaliation.

The penal mediation carried out by the National Police is an implementation of the rules/norms implied in the Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police, namely articles 16 and 18. has not been fully carried out properly and responsibly, because the penal mediation has become one of the breakthroughs and efforts made by the National Police in terms of resolving traffic accident cases outside the court.

*Restorative justice* is one of the paradigm shifts that provide solutions to the handling of the problem of child delinquency, which considers that the criminal justice system does not meet substantive justice, so it needs to be taken into consideration in handling child delinquency problems because this approach involves all parties in the settlement process to sit down together. consult. The definition of restorative justice in the Law of the Republic of Indonesia Number 11 of 2012 Article 1 paragraph (6) explains that restorative justice is the

settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other parties jointly seeking a fair solution, by emphasizing restoration to its original state and not retaliation.

A restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and their victims. Procedures and criminal justice mechanisms that focus on sentencing have been transformed into a mediation process to produce an agreement towards a more just and balanced case settlement.

Settlement of cases through a restorative justice approach provides opportunities for the perpetrators and victims to restore relations based on the agreement of the parties. The victim can convey the loss he has suffered and the perpetrator is allowed to pay through the compensation mechanism. The dimension of compensation for the suffering of victims associated with the restitution system is related to the repair or restoration of physical, moral, property and victim rights losses caused by criminal acts.

From the phenomena above, it is considered that the current criminal law has not been able to fulfil the sense of justice and there are still laws that continue to grow and develop and require a reconstruction of the concept of justice in national criminal law following the laws that live in society.

Several international instruments that regulate and recommend the application of restorative justice are contained in the *United Nations Standard Minimum Rules For Non-Custodial Measures (The Tokyo Rules)*, *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century* *The Bangkok Declaration-Synergies and Responses; Strategic Alliances in Crime Prevention and Criminal Justice*. UN Standard Minimum Rules for Action without Detention (Tokyo Rules), Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century Bangkok Declaration-Synergy and Response; Strategic Alliance in Crime Prevention and Criminal Justice.

These instruments in detail recommend minimum standards for the application of the principle of restorative justice as an alternative to reducing imprisonment. The principle of restorative justice can be applied to all persons with the status of suspects, defendants or convicts and in all stages of the criminal justice administration process. The application of the principle of restorative justice is based on the principle of non-discrimination based on race, religion, gender, age, language, politics, wealth, national origin, birth status or another status.

The application of *restorative justice* needs attention so that its implementation becomes more effective and can be actualized to the community in the form of resolving traffic accident cases that include the roles of the parties involved in achieving mutually beneficial results, not otherwise causing suffering for the provision of sanctions to the perpetrators and overriding the need for the victim. This condition shows that there are indicators that *restorative justice* is effective to be implemented.

Justice *restorative justice* will function properly if it meets other factors, namely:

1. Restorative justice is an approach to justice based on the philosophy and values of responsibility, openness, trust, hope and healing that focuses on reparations for losses due to crime, In addition to trying to encourage perpetrators to take responsibility for their actions, by providing opportunities for parties directly affected by crime, namely victims, perpetrators and the community, by identifying and paying attention to their needs after the crime has occurred, and seeking a solution and preventing further losses.
2. The restorative justice movement has had an impact on policymakers of the criminal justice system and practitioners around the world and promises positive things going forward in the form of a justice system to address conflicts due to crime and the law that can be accounted for, understood, which in turn can encourage greater public sensitivity by involving victims, perpetrators and community members in the restorative justice process.
3. Restorative justice can be implemented if the focus of attention is directed at the losses due to criminal acts, shared concerns and commitment to involving perpetrators and victims, encourage perpetrators to take responsibility, opportunities for dialogue between perpetrators and victims.
4. The application of restorative justice must be carried out systematically by first strengthening the legal system that underlies it comprehensively in terms of structure, substance and culture.
5. The priority scale of criminal acts and the types of crimes that can be resolved through the concept of restorative justice are novice offenders, not recidivists.

#### IV. CONCLUSION

The essence of *restorative justice* in the perspective of the settlement of traffic accidents is the process of resolving criminal acts outside the procedural law as an effort to find justice following the legal feelings of the community through peaceful efforts so that the process is simple, fast and cheap which more embody the principles of procedural law in Indonesia. *Restorative justice* in the criminal offence of traffic accidents is a new model in criminal justice from its former *sakel YKY heads* the principle of legality "*crimen delictum nullapoena sine praevialegepoenali*"(due process),"that an act can't be convicted except under the provisions existing criminal legislation

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