

Restorative Justice Approach in Traffic Crime Law Enforcement

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Abstract . This research explores the application of restorative justice, focusing on traffic cases resulting in fatalities, as outlined in Chapter XIX of the KUHP, which addresses crimes against the body. The study examines instances where traffic accidents caused deaths but were resolved through restorative justice practices. The findings indicate that within the National Police institution, the application of restorative justice in traffic cases is governed by both general and special conditions. These conditions are often conflicting, as general regulations typically reject restorative justice if a victim dies, yet special conditions allow for the possibility of resolving such cases at the investigation and inquiry levels. Similarly, at the Prosecutor's Office, the study revealed that the process of halting prosecution is generally not permissible for cases carrying sentences of over five years. However, in specific instances, exceptions are made, even though the Prosecutor's Office does not specifically address traffic crimes but regulates them under general provisions. This leads to an asynchronous approach to case resolution through restorative justice. The author concludes that there is a critical need for a dedicated law on Restorative Justice to ensure regulatory synchronization, thus providing clear and consistent guidelines for the application of restorative justice in traffic cases resulting in fatalities.

Keywords : Prosecutor's Office, Restorative Justice, Traffic

1. BACKGROUND

Objections are increasingly emerging in society regarding the administration of criminal justice in the process of enforcing criminal law regarding legal cases that occur in people's lives, where public dissatisfaction is, among other things, related to the problem of deadlines for administering justice that take long periods of time, tortuous processes, and lengthy bureaucracy. , until it is felt that the court decision does not provide justice for the victim and the community, so the community tries to find other ways to resolve the problems they face through settlement efforts outside the court with peace between the two parties (Ramadhan, 2021).

Apart from that, the imposition of criminal sanctions or punishment on perpetrators of criminal acts as a form of retaliation for the actions they have committed is based on retributive theory which is oriented towards retaliation/punishment efforts against the perpetrators, and pays little attention to the rights of victims of criminal acts who directly experience suffering and negative impacts. from these criminal acts, thereby encouraging the birth of a new approach to punishment, namely through the restorative justice paradigm which can better accommodate the interests of victims of criminal acts, without eliminating the perpetrator's

responsibility to make improvements, or return the situation to how it was before the crime occurred (Flora, 2018).

According to the retributive justice perspective, crime is a violation of public order *or* an act against society, against the collective body of citizens, against a set of standards by society's democratic institutions. Therefore, the administration of justice emphasizes responsibility exclusively by the state (monopolizing prosecution and enforcement). Meanwhile, the restorative justice perspective views crime, even though the crime is committed in violation of criminal law, as a conflict between individuals that causes harm to the victim, society and the offender himself. Among these three groups, the interests of crime victims are the main part, because crime is, according to Andrew Ashworth, "*primarily an offense against the victim and only secondarily an offense against the wider community or state* " (Ashworth & von Hirsch, 1993).

Restorative justice theory places a higher value on direct involvement by parties. Furthermore, W. Van Ness stated that restorative justice aims to achieve several values through the administration of criminal justice, namely; first, conflict resolution *which* contains the content of providing compensation (*recompense*) and restoration of good name (*vindication*); and, secondly, a sense of security (*safety*) which contains the contents of peace (*peace*) and order (*order*) (Mudzakkir, 2011).

The implementation of restorative justice in Indonesia, in several implementing regulations from law enforcement agencies, namely (a). Police Regulation Number. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice , (b). Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice , (c). Decree of the Director General of General Justice, Number: 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for Implementing Restorative Justice in the General Court Environment. This guideline regulates matters of restorative justice in minor crimes, cases of women in conflict with the law, children's cases, and narcotics cases , (d). Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA , 2012).

The application of Restorative Justice often occurs in traffic cases, in Article 1 number 24 of the Road Traffic and Transportation Law, "a traffic accident is an unexpected and unintentional incident on the road involving a vehicle with or without other road users which results in human casualties and/or property losses". In this Law, the regulation and application of criminal sanctions are more strictly regulated. For minor violations, imprisonment or a relatively lighter fine will be imposed. However, serious violations that contain an element of

intent are subject to much heavier criminal sanctions. This is intended to have a deterrent effect on perpetrators of violations without placing too much of a burden on society. Apart from criminal sanctions, this Law also regulates administrative sanctions imposed on transportation companies in the form of warnings, freezing permits, revoking permits, giving fines (Putri, 2021).

This article focuses on a traffic accident case. On Thursday, August 10 2023, at around 13.00 WITA, on the public road in Bat Mosque Hamlet, Puyung Village, Jonggat District, Central Lombok Regency, a traffic accident occurred between a Daihatsu Sigra car with plate number DR 1513 The SF was driven by the suspect Mekar on a Honda Beat Pop motorbike with the license plate number DR 3699 TO which was driven by the victims LALU DARMAWAN and INDUN (riding) (<https://kejadi-ntb.kejaksaan.go.id> , 2024). The suspect came from the north or at the red light intersection in Puyung Village, heading south or towards Sukarara Village, then when he arrived at the public road in Bat Masjid Hamlet, Puyung Village, Jonggat District, Central Lombok Regency, he crashed into a motorbike driven by victims Lalu Darmawan and riding with the Indun victims who came from the south and headed north.

Victim Lalu Darmawan suffered lacerations and open fractures in several parts of the body. After receiving treatment at the community health center, victim Lalu Darmawan was declared dead. Meanwhile, the victim Indun suffered bleeding and broken bones in several parts of the body. Suspect Mekar is accused of Article 310 paragraph (3) and paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation. In this case the police could not use the process of implementing restorative justice, because one of the victims died, however, at the Prosecutor's stage, the process of implementing restorative justice was running. The problem in this writing is how the implementation of restorative justice in the National Police and Prosecutor's institutions is related to the cases appointed as research objects.

2. THEORETICAL STUDY

The law has a function as a protector of human interests. In order for human interests to be protected, the law must be implemented professionally. The implementation of the law can take place normally, peacefully and orderly. Legal protection is very important and influences justice for all Indonesian citizens (Wadjo & Saimima, 2020). The models and mechanisms of the criminal justice system have changed over time. The development of science and technology also contributes to the renewal of the criminal justice system. One of them is the Restorative Justice (Maya & Wadjo, 2021)*approach* .

The definition of *restorative justice* can also be seen in the second edition of the handbook on restorative justice programs issued by *the United Nations Office on Drugs and Crime* (United Nations, 2020). In this *handbook*, *restorative justice* is called a restorative justice program, namely any program that uses a restorative process and seeks to achieve restorative results (United Nations, 2020).

The emphasis in this definition is clearly on participatory processes which are defined as any process in which the victim and the perpetrator, and, where appropriate, any other individual or member of society affected by the crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Meanwhile, restorative outcomes are agreements reached as a result of a restorative process which aims to fulfill the individual and collective needs and responsibilities of the parties and achieve reintegration of victims and perpetrators. It is generally assumed that restorative outcomes must include some form of compensation, compensation or reparation, but are not limited to this, it may also be that an apology is sufficient as an outcome (United Nations, 2020).

In restorative justice there are values that form the basis for its implementation, namely:

1. *Reparation*, focuses on recognizing and repairing the physical, emotional and financial damage caused by crime and meeting the needs of those affected.
2. *Respect*, treating all participants with equal dignity, compassion and consideration.
3. *Voluntariness*, ensuring that participation by victims, perpetrators and community members is voluntary, and based on free, informed and ongoing consent.
4. *Inclusion*, fostering and supporting the participation of those affected, including victims, perpetrators, their friends, their families and their communities.
5. *Empowerment*, enabling participants to communicate openly and honestly, and play an active role in determining how to meet their needs.
6. *Safety*, paying attention to the physical, emotional, cultural and spiritual safety and well-being of all participants. Participation in restorative justice must not result in further harm to any participant.
7. *Accountability*, helping those who have caused harm to acknowledge and take responsibility for losses and reparations.
8. *Transformation*, providing opportunities to understand, heal and change, and contribute to the recovery and reintegration of victims and perpetrators.

Restorative justice has objectives including (United Nations, 2020):

1. Support victims, give them a voice, listen to their stories, encourage them to express their needs and desires, give them answers, allow them to participate in the resolution process and offer them help.
2. Repair relationships damaged by crime, in part, by reaching consensus on how best to respond
3. Reaffirm community values and condemn criminal behavior
4. Encourage the taking of responsibility by all related parties, especially by violators.
5. Identify restorative and forward-looking outcomes
6. Prevention of recidivism by encouraging changes in individuals' behavior and facilitating their integration into society

The basic principles of *restorative justice* include (Marian Liebman,):

1. Prioritize support and healing for victims. Support for victims is important, considering that victims often experience fear or trauma due to criminal acts that have happened to them. Healing or recovery of victims must be prioritized, not only related to how to punish the perpetrator but the victim's need to recover from what happened is important, for example the victim's property or rights can be returned, the victim's questions about what happened to him can be answered, information complete information about what happened, etc.
2. Perpetrators are responsible for the actions they commit. The perpetrator has received a very different punishment from the perpetrator being responsible for his actions. Perpetrators often receive punishment from the state in various forms, for example prison, which actually uses up a lot of the state budget, and tend to end up with this punishment without thinking about the condition of the victim who has been harmed. Taking responsibility means stating that he indeed committed the criminal act and is responsible for the harm he has caused. This is the starting point of restorative justice.
3. There is dialogue to achieve understanding. Dialogue between the perpetrator and the victim is an important principle in *restorative justice*, where the victim often does not understand why he became a victim, what wrong he did to become a victim and other questions directed at the perpetrator. On the other hand, perpetrators are often unable to explain to the victim the reasons for the actions they have committed. In restorative justice, this is a main process, so that understanding can be gained between the parties, and they can convey their wishes for resolving the case, the result of which is of course the recovery of the victim. This can be done by understanding what the victims and other parties want.

4. There are efforts to repair the damage or loss that occurs. The perpetrator can take steps to take responsibility by repairing the damage or loss caused by his actions. Sometimes an apology solves the problem, but often repairing the damage is more necessary.
5. The perpetrator may see or look for ways to avoid future violations. When the perpetrator is aware of the actions he has committed and has taken responsibility for his actions, the perpetrator is expected to be able to see and find a way so that he does not commit the same or other actions again in the future. This will prevent the creation of more victims in the future.
6. Society helps reintegrate victims and perpetrators. Offenders need to be reintegrated into society, especially after a prison sentence, they need accommodation, employment and building relationships to become good members of society. However, victims also need to be integrated into society. Sometimes victims will feel isolated and disconnected from society due to the crime they have experienced, trauma from being in the environment where the crime occurred, this requires community support to psychologically and physically help crime victims.

From the values and principles above, it appears that restorative justice does not just resolve conflicts or disputes, but there is an interest in public safety in ensuring that not only the situation that occurred can be resolved but also that future events can be prevented. *Restorative justice* has the basic principle of being a growing response to crime by respecting the dignity and equality of every person, building understanding and promoting social harmony through the restoration of victims, perpetrators and society.

Restorative justice has several main models that have been practiced in several countries, which are explained as follows (Marian Liebman):

1. *Victim Offender Mediation (VOM)*

Victims and perpetrators engage in discussions about the crime and its impact, facilitated by an impartial third party trained in this process, either in face-to-face meetings or through other indirect means. This model can be operated by government agencies or non-profit organizations, where the direction to carry out this process can come from the police, public prosecutor, court, legal advisor and can also be at the request of the offender or victim. In practice, the facilitator usually meets with both parties before the face-to-face meeting to help them prepare. This is done to ensure, among other things, that the victim is not re-victimized by meeting the perpetrator, and that the perpetrator admits responsibility for the incident and sincerely wants to meet the victim. When direct contact between victim and perpetrator is possible, one or both parties may be accompanied by a friend or supporter (who

does not always participate in the discussion). Indirect mediation processes where the facilitator meets with the parties successively and separately to convey messages (including audio or video recordings) are also widely used. There are 4 basic requirements that must be met before VOM can be used:

- a. The perpetrator must accept (or at least not deny) responsibility for the harm done.
- b. The victim and perpetrator agree on the basic facts of the case as a basis for their participation in mediation.
- c. Both victims and perpetrators must understand the process and be willing to participate.
- d. Both the victim and the perpetrator must consider it safe to engage in the process.

2. *Restorative Conferences*

Other people affected by the violation, such as family members, friends, community representatives, and, depending on the model, police or other professionals, are brought together by an impartial third party who acts as a conference facilitator. This model is divided into two forms:

- a. *Family Group Conferences (FGC)*, often used to divert children from the formal criminal justice system, have facilitators in the process. This model brings together the family and friends of the victim and perpetrator, and sometimes other members of the community, to participate in a professionally facilitated process. The FGC process aims to identify the desired outcome for the parties, address the consequences of the crime and explore appropriate ways to prevent re-offending behavior. This conference process is very effective as a means of ensuring that actors follow through on agreed outcomes.
- b. *Community Conferences*, managed by community groups or institutions, with or without financial support from the government. These conferences usually bring together those who care most about the perpetrators and victims and other members of the community who have an interest in the process.

3. *Circles (Communal Dialogue)*

Expanding participation of participants beyond victims and perpetrators. Family and supporters can be included in this process. Communities affected by criminal acts that occur can also be involved in this process.

There are four important stages in the *circles process* :

Stage 1: Determine whether a particular case is suitable for the *circles process* .

Stage 2: Preparing the parties who will be involved in *the circles*

Stage 3: Seek consensual agreement within *the circle*

Stage 4: Provide follow-up and ensure the perpetrator complies with the agreement

In this model, *Sentencing Circles are also known* , which can occur inside or outside the court, with or without the participation of judges and lawyers. Judges are not bound by advice received from *circles* , but *circles* can be a valuable source of information for the court when sentencing. The aim is to heal all those affected, especially victims, but also to facilitate the rehabilitation and social reintegration of the perpetrator by improving social relations between the perpetrator and members of the community .

In the *Restorative justice process* , there is also a *Quasi-restorative justice process* , which does not always involve the victim's participation. There are three quasi forms, namely *Community Panels and Boards* , where the perpetrators are responsible to community representatives who were formed specifically for that purpose. Then, there are *Circles of support and accountability* , which aim to reintegrate and manage the risk of high-risk behavior, including crimes related to sexual violence. In the process there are volunteers who accompany violators and function as mentors and provide awareness to perpetrators regarding the perpetrator's obligations for their actions/ the losses it causes. Apart from that, there are also forms of *victim surrogate programs* , where the victim is not an individual or is related to a victimless crime or when the victim is unable, does not want to or for some reason does not participate. directly in the *restorative process* , it is possible that there will be a replacement victim (Marian Liebman) .

The restorative justice process can be carried out at all stages of the judicial process, starting from the pre-prosecution stage, the trial stage which can delay the trial process or suspend the sentence to direct the perpetrator to a restorative justice program, as well as the post-judgment stage to carry out community-based reintegration and *restorative justice programs* within prison.

3. RESEARCH METHODS

The method used is a legal research method using literature studies related to law enforcement in the traffic sector using a conceptual approach regarding the application of restorative justice and statutory regulations related to the cases raised. The laws and regulations related to this writing are:

- a. Police Regulation Number. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice;
- b. Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;

c. Law Number 22 of 2009 concerning Road Traffic and Transportation.

Apart from the two approaches above, this research also uses a case approach, by discussing the case of Bloom who committed a traffic crime which resulted in one person dying and one victim being injured.

4. RESULTS AND DISCUSSION

In the case of a traffic accident, experienced by traffic victims Darmawan and Indun, with the suspect blooming, the victim Darmawan was declared dead. Meanwhile, Victim Indun suffered bleeding and broken bones in several parts of her body. The suspect Mekar is accused of Article 310 paragraph (3) and paragraph (4) of the Republic of Indonesia Law no. 22 of 2009 concerning Road Traffic and Transportation. The suspect and his family provided condolence money/compensation as well as medical expenses while the victim was being treated.

The restorative justice process was carried out through peacemaking on Monday 6 November 2023 at the Central Lombok District Prosecutor's Office, during Phase 2, peace efforts were then carried out between the suspect and the victim, which was attended by the victim's family, the suspect's family, community leaders, namely the Head of Sukarara Village and the Village Head. Batutulis, Kasi Pium and Public Prosecutor. The victim Indun has forgiven the suspect's actions.

The peace process was agreed upon by the suspect and the victim with the following conditions: the suspect provided compensation of Rp. 50,000,000.00 (Fifty million Rupiah) and 25 (Twenty Five) Kilograms of rice assistance for the mourning event for the victim's family.

Of course, the question is what the difference is in the arrangements for implementing restorative justice in traffic accident cases, which are carried out by the police and the prosecutor's office. The regulation of restorative justice in the Police is regulated in the Republic of Indonesia State Police Regulation Number 9 of 2021, concerning Handling Criminal Acts Based on Restorative Justice, which is regulated in Article 7 letter c, then explained in Article 10 paragraph b concerning traffic accidents on the road, due to negligence. which results in human casualties and/or property loss, in fact in Article 5 concerning material requirements, Perkap Number 9 of 2021 itself has rejected criminal acts against people's lives, but in Article 10 relating to Traffic the application is different for perpetrators whose victims die.

Deliberately taking another person's life in the criminal code is known as murder. To kill another person's life, the perpetrator must do something or a series of things related to the death

of another person, noting that the intention (*opzet*) of the perpetrator must be aimed at the result in the form of that person's death (PAF Lamintang, SH, & Theo Lamintang, SH, 2023). Crimes about Life, originate from *the Code The French Penal Code* , which was first created in 1810 when Napoleon Bonaparte became the ruler of France, regulates crimes against life in Book III on *Crimes and Delicts, and their Punishment* which was stipulated on February 17 1810 and announced on February 27 1810. Chapter I Book III *Code The penalty* regulates murder and criminal threats in Part I in Articles 295-308, in *the Code The penalty* , the crime of murder, consists of several types, namely:

- a. Premeditated murder;
- b. Murder of parents (father/mother);
- c. Infanticide;
- d. Murder by poisoning and torture/barbarity (Ahmad, B., 2012)

From the explanation above, it is clear that crimes against life are related to actions that result in someone's death. However, Perkap Number 9 of 2021 regulates that in general conditions it is prohibited to settle cases at the inquiry and inquiry stage, but the special conditions allow perpetrators to close cases at the inquiry and investigation stage. Of course, Perkap Number 9 of 2021 has given rise to multiple interpretations in the field in its implementation.

Meanwhile, Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Tax Number 15 of 2020). This regulation regulates the closure of cases for legal purposes in the event of:

- a. the defendant dies;
- b. expiration of criminal prosecution;
- c. there has been a court decision that has permanent legal force against a person regarding the same case (*nebis in idem*);
- d. a complaint for a criminal offense is revoked or withdrawn; or
- e. there has been a settlement of the case outside the court (*afdoening buiten process*).

Settlement of cases outside of court as can be done with the following provisions:

- a. for certain criminal acts, the maximum criminal fine is paid voluntarily in accordance with the provisions of laws and regulations; or
- b. there has been a restoration of the original situation using a Restorative Justice approach.

Criminal cases can be closed by law and prosecution terminated based on Restorative Justice if the following conditions are met:

- a. the suspect has committed a crime for the first time;

- b. criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years; And
- c. The criminal act is committed with the value of the evidence or the value of the loss incurred as a result of the criminal act not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).

The case with the suspect escalated, resulting in the victim Lalu Darmawan dying due to injuries suffered by the victim, in the Criminal Code (KUHP), Article 338 Whoever intentionally takes the life of another person, is threatened with murder with a maximum prison sentence of fifteen years, from this Article of the Criminal Code, the suspect Mekar should not be able to terminate the prosecution on the basis of Restorative Justice.

Mekar is suspected of Article 310 paragraph (3) and paragraph (4) of Law Number 22 of 2009, Article 310 paragraph (3).

Every person who drives a motorized vehicle whose negligence results in a traffic accident with serious injuries as intended in Article 229 paragraph (4), shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 10,000,000.00 (ten million rupiah).

Article 310 paragraph (4).

In the event of an accident as intended in paragraph (3) which results in the death of another person, the person will be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 12,000,000.00 (twelve million rupiah).

The threat from the two paragraphs above threatens a maximum of 5 (five) years and 6 (six) years. For cases of victims who only suffer injuries, there is no problem in applying to stop the prosecution, but for victims who die, it is impossible to stop it. Paul Takagi and Gregory Shank, " *Restorative Justice has become a business beyond US Federal Agencies* " (Takagi, P., & Shank, G., 2004), free translation "Restorative Justice has become a business beyond US Federal Agencies". If in America it occurs outside government agencies, in Indonesia the practice of implementing restorative justice is like a business within law enforcement agencies because the implementation does not comply with the regulations made by law enforcement agencies.

5. CONCLUSIONS AND RECOMMENDATIONS

The application of restorative justice in the National Police institution, for traffic cases, there are general conditions and special conditions, which are actually in conflict because one refuses if the victim dies, but in special conditions the opportunity is opened to carry out the

process of resolving traffic crimes at the investigation and level. investigation. At the Public Prosecutor's office, it is associated with cases appointed as research objects, we can see that the process of terminating prosecution cannot be carried out in cases that are threatened with more than 5 (five) years, but in cases of interest it can be carried out, Perjak also does not regulate the matter of past criminal acts. cross-border, but regulated in general, so that we can see that the regulations regarding resolving cases using a restorative justice approach are not synchronized, so I am the author that there must be a law on Restorative Justice so that there is synchronization of regulations.

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