

Legal Implications of Limiting Restorative Justice in Traffic Accidents Causing Death According to Article 235 Law Number 22 Of 2009 Concerning Road Traffic And Transportation

Gesit Sukma W

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: gesitsukmaw.std@unissula.ac.id

Abstract. *Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law), Article 235, explicitly states that traffic accidents resulting in fatalities cannot be resolved through restorative justice mechanisms. This provision raises legal issues, particularly when compared to the growing restorative justice paradigm incorporated into the Indonesian criminal justice system, as outlined in Indonesian National Police Regulation Number 8 of 2021. This study aims to examine the legal implications of this restriction and assess its compliance with the principles of substantive justice and the rights of both victims and perpetrators. The research method used is normative research with a legislative and conceptual approach, supported by empirical studies through interviews with law enforcement officers and related parties. The results show that the prohibition on the application of restorative justice in accident cases with fatalities creates tension between legal certainty and the public's sense of justice, particularly when there is reconciliation between the victim's family and the perpetrator. This restriction, although intended to maintain the values of formal justice, can hinder a more just and humane resolution. Therefore, it is necessary to evaluate and synchronize regulations so that the implementation of restorative justice continues to take into account the social and humanitarian context and the restoration of relations between perpetrators and victims.*

Keywords: *Accidents; Fatalities; Justice; Restorative.*

1. Introduction

Restorative justice (RJ) has become an increasingly recognized approach in modern criminal justice systems, including in Indonesia, as a method of resolving cases that prioritizes restoring relationships between perpetrators, victims, and the community. This approach seeks to move beyond the retributive paradigm and seek a more substantive and humane approach to justice. One of the most debated areas in this context is its application to traffic accidents resulting in death.

However, Article 235 of Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) explicitly states that traffic accidents resulting in fatalities cannot be resolved through a restorative justice approach. This provision represents a positive legal limitation on

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the peace mechanisms that have developed in society, including those facilitated by law enforcement officials.

Ironically, in practice, many state officials, particularly members of the Indonesian National Police (Polri) who work in traffic units, are leading public opinion to believe that traffic accidents involving fatalities can still be resolved amicably through restorative justice. Several cases demonstrate that even after the victim dies, the investigation process is discontinued due to an agreement between the perpetrator and the victim's family, which in practice is equated with restorative justice mechanisms. This has certainly sparked controversy, as it directly contradicts the norms stipulated in Article 235 of the Traffic and Road Traffic Law.

Article 235 of the Traffic and Road Traffic Law clearly states that only traffic accidents resulting in property damage, minor or serious injuries can be resolved amicably. In the event of death, law enforcement must proceed to trial. This demonstrates that national law has established very strict limits on the scope of restorative justice in traffic accidents.¹

Police actions in facilitating restorative justice in accidents that result in death not only violate the law but also open up opportunities for abuse of authority and potential impunity for perpetrators. In this context, erroneous understanding and enforcement of the law can result in a loss of legal certainty and injustice for the victim's family.

According to interviews with several families of traffic accident victims, they are often forced to accept offers of reconciliation due to social pressure and persuasion from authorities seeking a swift and peaceful resolution. This phenomenon demonstrates the bias and power imbalance between victims and perpetrators, disguised as restorative justice.²

This mistaken approach demonstrates a weak understanding among some officials of the limitations of restorative justice in positive law. Restorative justice is not a form of criminal remission, but rather a process aimed at restoring social relations, while remaining grounded in applicable legal regulations. When the law expressly prohibits the application of restorative justice in certain cases, officials should comply with those provisions.

Furthermore, according to Ibnu Qayyim al-Jawziyya, social justice and protection of the right to life are the main pillars of Islamic law. If someone takes another person's life due to negligence, then there must be strict sanctions to maintain public benefit and prevent damage to society.³ Thus, the restoration of social relations must go hand in hand with consistent law enforcement, and must not eliminate the sense of justice for victims.

The restorative justice approach in Islam must also take into account the social and cultural context of society. In Indonesia's diverse context, the principle of *maslahah mursalah* (public interest) can be a basis for assessing whether a reconciliation is acceptable, as long as it does not neglect the principles of justice and legal certainty.⁴ Therefore, limiting restorative justice

¹Law Number 22 of 2009 concerning Traffic and Road Transportation, Article 235.

²Results of the author's interview with the families of traffic accident victims in Palangka Raya, March 2025.

³ Ibn Qayyim al-Jawziyya, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, Dar al-Kutub al-Ilmiyyah, Beirut, 2000, p. 158-160.

⁴ Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*, Oneworld Publications, 2008, p. 104-106.

in cases of death can be seen as an effort to maintain a balance between restorative justice and fair and firm criminal law. Islamic studies support the need to limit restorative justice in traffic accidents resulting in death, as stipulated in Article 235 of the Traffic and Road Traffic Law, to guarantee the victim's right to life and prevent injustice and abuse of authority.

In the context of restorative justice being applied haphazardly without regard to legal provisions, what results is not justice, but rather a compromise that harms the weaker party. Therefore, this thesis is important for critically examining the limitations of RJ under Article 235 of the LLAJ Law, while also describing deviant practices in the field.

Normatively, the author believes that limiting restorative justice to cases of death in traffic accidents is an appropriate step to uphold the fundamental values of criminal law. However, in a sociological context, the reality of practice on the ground demonstrates a disparity between the legal text and its implementation.

The purpose of this paper is to delve deeper into the tension between legal norms that limit restorative justice and law enforcement practices that often ignore it. In doing so, it is hoped that both normative and practical solutions can be found in efforts to create a just, consistent, and victim-friendly criminal justice system.

Furthermore, it is necessary to examine whether the prohibition on RJ in cases of death is absolute or whether it can still be interpreted progressively, taking into account the social, cultural, and humanitarian contexts. From some perspectives, substantive justice may be more appropriately achieved through a non-litigation approach if agreed upon by all parties without pressure.

2. Research Methods

This type of research is normative legal research, namely research conducted by examining both primary and secondary legal materials. This research aims to examine applicable legal norms, legal theories, and legal doctrines related to the limitations of restorative justice in traffic accident cases resulting in death. In addition to a normative approach, this research is also juridical-qualitative, aiming to interpret applicable laws and regulations in relation to legal principles and the views of legal experts and Islamic jurists. Its primary focus is understanding substantive justice in the context of the limitations of the application of restorative justice and its relationship to Islamic legal values.

3. Results and Discussion

3.1. Larangan Penerapan Restorative Justice dalam Pasal 235 UU Lalu Lintas dan Angkutan Jalan terhadap Pelaku Kecelakaan Lalu Lintas dengan Akibat Korban Meninggal Dunia

1) Kedudukan Normatif Pasal 235 UU LLAJ

Pasal 235 Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan (UU LLAJ) mengatur bahwa apabila terjadi kecelakaan lalu lintas yang mengakibatkan korban

meninggal dunia, pengemudi diwajibkan memberikan bantuan biaya pengobatan dan/atau biaya pemakaman kepada keluarga korban.⁵ Norma ini menunjukkan orientasi hukum positif Indonesia dalam menjamin hak-hak korban atau ahli waris sebagai konsekuensi dari hilangnya nyawa dalam sebuah peristiwa lalu lintas. Dengan demikian, ketentuan tersebut menegaskan posisi negara sebagai pelindung kepentingan korban dan keluarganya, sekaligus sebagai penentu arah pertanggungjawaban pidana bagi pelaku.

Ketentuan ini mengandung makna bahwa negara menempatkan hilangnya nyawa manusia sebagai akibat hukum yang memiliki bobot paling tinggi. Hilangnya nyawa dipandang tidak dapat sepenuhnya dipulihkan melalui kesepakatan damai antara pelaku dengan keluarga korban.⁶ Oleh sebab itu, Pasal 235 UU LLAJ tidak membuka kemungkinan untuk menerapkan prinsip restorative justice sebagai alternatif penyelesaian perkara. Kematian diposisikan sebagai bentuk kerugian absolut yang mengharuskan penegakan hukum pidana dengan mekanisme peradilan formal.

Dalam sistem hukum pidana Indonesia, prinsip ini sejalan dengan asas legalitas sebagaimana diatur dalam Pasal 1 ayat (1) KUHP,⁷ yang menyatakan bahwa tiada suatu perbuatan dapat dipidana kecuali berdasarkan ketentuan undang-undang. Konsekuensi logisnya adalah aparat penegak hukum harus tunduk pada perintah undang-undang, termasuk dalam penanganan perkara kecelakaan lalu lintas dengan akibat meninggal dunia.

2) Perspektif Dogmatika Hukum Pidana

Analisis dogmatik hukum pidana memperlihatkan bahwa ketentuan dalam Pasal 235 UU LLAJ menempatkan kecelakaan lalu lintas yang mengakibatkan kematian sebagai delik materiil. Delik materiil adalah tindak pidana yang penyelesaiannya ditentukan oleh adanya akibat yang terjadi, dalam hal ini hilangnya nyawa korban.⁸ Orientasi hukum pidana klasik yang digunakan dalam UU LLAJ menitikberatkan pada akibat yang ditimbulkan, bukan semata pada kelalaian atau kesalahan pengemudi.

Hilangnya nyawa dipahami sebagai kerugian yang bersifat final dan tidak dapat dipulihkan kembali. Oleh karena itu, hukum pidana menekankan fungsi retributif dan prevensi umum, yakni pemidanaan bagi pelaku sebagai bentuk pembalasan sekaligus sebagai peringatan bagi masyarakat agar berhati-hati dalam berkendara.⁹ Dari sini dapat dilihat bahwa peraturan perundang-undangan menolak penerapan keadilan restoratif karena dianggap tidak sejalan dengan prinsip deterrence yang hendak ditegakkan.

Dalam praktik penegakan hukum di Indonesia, ruang bagi penerapan restorative justice lebih banyak diberikan pada perkara-perkara ringan yang tidak menimbulkan kerugian besar atau korban jiwa.¹⁰ Meanwhile, in cases involving death, the principle of ultimum remedium is

⁵Law Number 22 of 2009 concerning Traffic and Road Transportation, State Gazette of the Republic of Indonesia 2009 Number 96.

⁶Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Jakarta: Kencana, 2017), p. 45.

⁷Criminal Code (KUHP), Article 1 paragraph (1).

⁸Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2002), p. 104.

⁹Muladi & Barda Nawawi Arief, *Criminal Theories and Policies*, (Bandung: Alumni, 2010), p. 65.

¹⁰Rena Yulia, *Victimology: Legal Protection for Crime Victims*, (Yogyakarta: Graha Ilmu, 2013), p. 152.

difficult to apply. The application of formal criminal penalties is seen as a mandatory means to protect the public interest and maintain the authority of the law.

3) Non-conformity with the Principles of Restorative Justice

From the perspective of restorative justice theory, the norms contained in Article 235 of the Traffic and Traffic Law are inconsistent with the core principles of restorative justice, which emphasizes resolving criminal conflicts through deliberation, dialogue, and restoring social relations. Restorative justice places the interests of victims, perpetrators, and the community as a unified whole that must be resolved fairly.¹¹ However, in the context of traffic accidents that cause death, the state closes the possibility of full peace on the grounds of protecting public interests.

Restorative justice does not aim to erase the consequences, but rather to restore relationships damaged by the crime. In traffic accidents, the relationship between the victim's family and the perpetrator can be restored through reconciliation, compensation, or a sincere apology. However, Article 235 prioritizes formal obligations such as providing medical and funeral expenses, which essentially only regulates material compensation.¹² Thus, the social and psychological dimensions that are the spirit of restorative justice are actually ignored.

This gap demonstrates a conflict between the legal certainty safeguarded by Article 235 and the substantive justice desired by restorative justice theory. At the normative level, Indonesian positive law prefers to emphasize the legal-formal aspect, while the value of social reconciliation remains a secondary issue.¹³

4) Perspective of the Theory of the Purpose of Punishment

Within the theoretical framework of the purpose of punishment, Article 235 of the Traffic and Traffic Law aligns more closely with the classical paradigm, which emphasizes retributive and general preventive functions. Punishment is viewed not only as retribution for the perpetrator's wrongdoing, but also as a means to uphold the authority of the law and provide a deterrent effect for the wider community.¹⁴

Retribution is a form of state retaliation against the perpetrator for causing the loss of life. This goal cannot be fully substituted by a peace agreement between the perpetrator and the victim's family, as life cannot be replaced by material compensation or an apology.¹⁵ Thus, the prohibition on the application of restorative justice in the context of death actually

¹¹Tony F. Marshall, *Restorative Justice: An Overview*, (London: Home Office Research Development and Statistics Directorate, 1999), p. 5.

¹²Mardjono Reksodiputro, *Human Rights in the Criminal Justice System*, (Jakarta: UI Center for Justice and Legal Services, 2007), p. 82.

¹³Lilik Mulyadi, *Principles of Restorative Justice in the Criminal Justice System in Indonesia*, (Bandung: PT Citra Aditya Bakti, 2015), p. 119.

¹⁴Andi Hamzah, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2014), p. 82.

¹⁵Muladi, *Selected Chapters on the Criminal Justice System*, (Semarang: UNDIP Publishing Agency, 2015), p. 54.

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strengthens the principle of *ius puniendi* of the state in maintaining legal order and protecting public interests.

Furthermore, general prevention is also heavily emphasized. Criminal penalties for negligent drivers resulting in fatalities are intended to serve as a stern warning to the public to be more careful when driving.¹⁶ If cases like this are resolved solely through restorative justice, it's feared that it will create the perception that even fatal violations can be negotiated with monetary compensation. This, of course, has the potential to weaken the function of criminal law as a means of social control.

In the context of modern theories of the purpose of punishment, rehabilitative and reintegrative functions are indeed recognized, but their application is more appropriate in cases that do not result in loss of life.¹⁷ Meanwhile, in cases of traffic accidents resulting in death, the priority of positive law remains on the repressive and preventive functions to guarantee legal certainty and protection of human life.

5) Views of Islamic Law on Jinayah, Diyat, and Afw

From the perspective of Islamic law, acts that result in the loss of another person's life due to negligence (*qatl al-khata'*) are classified as criminal acts of *jinayah*, the consequences of which are the obligation to pay *diyat* (compensation) and perform expiation.¹⁸ This provision shows that Islam recognizes the existence of a form of criminal responsibility even if the act is carried out without any element of intent.

The concept of *diyat* in Islamic law is basically similar to the obligation to compensate for losses in Article 235 of the LLAJ Law, namely providing compensation to the victim's heirs.¹⁹ However, Islamic law extends beyond material compensation and also allows for forgiveness from the victim's family. With this, the criminal sentence can be dropped if the heirs are willing to forgive the perpetrator.²⁰

Unlike the construction of positive law in Indonesia, the *afw* mechanism in Islamic law provides more room for restorative values, as forgiveness is seen as a path to achieving social well-being. This principle aligns with the *maqasid al-syari'ah* (the principle of Islamic law), which emphasizes the protection of the soul (*hifz al-nafs*) and the restoration of social relations.²¹

However, Article 235 of the LLAJ Law does not fully adopt the *afw* mechanism. The state continues to assert that the victim's death is a public interest that cannot be set aside on the grounds of forgiveness. This difference demonstrates the normative tension between

¹⁶Romli Atmasasmita, *Theory and Selected Chapters of Criminology*, (Bandung: Refika Aditama, 2012), p. 134.

¹⁷Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Jakarta: Kencana, 2017), p. 88.

¹⁸Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Juz VII (Beirut: Dar al-Fikr, 2005), p. 542.

¹⁹Muhammad Abu Zahrah, *Al-Jarimah wa al-'Uqubah fi al-Fiqh al-Islami*, (Cairo: Dar al-Fikr al-'Arabi, 1998), p. 121.

²⁰Abd al-Qadir 'Awdah, *Al-Tasyri' al-Jina'i al-Islami*, (Beirut: Muassasah al-Risala, 1994), p. 312.

²¹Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, (London: IIIT, 2008), p. 43.

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Indonesian positive law, which emphasizes legal certainty, and Islamic law, which is more flexible and emphasizes a balance between retributive and restorative justice.²²

Based on theoretical and normative analysis, the prohibition on the application of restorative justice in Article 235 of the Traffic and Traffic Law can be understood as a legal policy choice that emphasizes legal certainty and the protection of human life. The state considers the loss of life an absolute loss that must be resolved through formal criminal justice mechanisms.

However, when comparing the theory of the purpose of punishment and the concept of Islamic law, there is a clear space for discourse. Classical theory of the purpose of punishment justifies the prohibition for the sake of deterrence and legal certainty, while Islamic law prioritizes diyat (retribution) and afw (retribution) as a means of social reconciliation. From this, it can be concluded that Indonesian positive law is more rigid, while Islamic law is more open to restorative justice mechanisms in cases of death due to negligence.

6) Normative Consequences of the Ban on Restorative Justice

The prohibition on restorative justice in Article 235 of the Traffic and Traffic Law has several normative consequences. First, it strengthens the function of criminal law as an instrument of social control.²³ The state emphasizes that loss of life cannot be considered a purely private matter, but rather concerns the public interest, which must be firmly protected. Therefore, any perpetrator who causes a victim's death will still be prosecuted criminally, and this cannot be stopped simply by a peace agreement.

Second, the prohibition also prevents injustice in society. If restorative justice is applied in cases of death, there is potential for inequality because the perpetrator's financial ability can influence the resolution of the case.²⁴ In other words, perpetrators who can afford substantial compensation can more easily resolve cases amicably, while perpetrators from lower economic backgrounds don't have the same opportunity. This can create discrimination and undermine substantive justice.

Third, this prohibition maintains the consistency of the Indonesian criminal law system which adheres to the principles of *nullum crimen sine lege* and *nulla poena sine lege*.²⁵ This means that, even though there is discourse on restorative justice, law enforcement remains bound by the limits of the law. This consequence is crucial to ensure legal certainty, preventing deviant legal practices or contradictions between written norms and their implementation.

7) Critical Evaluation of the Policy of Article 235 of the LLAJ Law

However, this rigid legal policy is not without criticism. From a restorative justice perspective, an absolute prohibition actually closes off the opportunity for social healing between the

²²A. Djazuli, *Fiqh Jinayah: Efforts to Overcome Crime in Islam*, (Jakarta: RajaGrafindo Persada, 2000), p. 157.

²³Satjipto Rahardjo, *Law in Perspective: Opening the Horizon of Legal Thought*, (Jakarta: Kompas, 2016), p. 112.

²⁴Muladi & Barda Nawawi Arief, *Criminal Theories and Policies*, (Bandung: Alumni, 2010), p. 66.

²⁵Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2008), p. 24.

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perpetrator and the victim's family.²⁶ In practice, many victims' families prefer a sincere apology and assurance of moral responsibility from the perpetrator rather than simply seeing the perpetrator sentenced to prison.

Furthermore, imposing prison sentences often doesn't fully resolve the issue. Many cases show that traffic accident perpetrators acted out of negligence, not malice.²⁷ Therefore, prison sentences are often viewed as excessively harsh, while reparation for harm and maintenance of social harmony are not optimally achieved. This criticism aligns with the views of criminologists who believe that overcriminalization can actually undermine the very purpose of punishment.²⁸

In the context of Islamic law, the rigidity of Article 235 of the LLAJ Law also appears to be inconsistent with the principle of *afw* which provides room for forgiveness.²⁹ Islam teaches that justice is not merely about punishment, but also about restoration, reconciliation, and forgiveness as a path to social well-being. This difference demonstrates that Indonesian positive law still emphasizes legal certainty, while paying less attention to the values of humanity and social morality as taught in sharia.

8) Comparative Reflection: The Middle Way between Legal Certainty and Restorative Justice

Reflecting on the tension between Article 235 of the Traffic and Traffic Law and restorative justice theory suggests the need for a compromise. Normatively, perpetrators must still be prosecuted to ensure legal certainty and a deterrent effect, but restorative justice mechanisms can be positioned as a complementary approach.³⁰ For example, restorative justice can be applied at the stage of fulfilling the obligation to compensate, grant forgiveness, and restore social relations, without eliminating the criminal justice process.

With this model, a balance between legal certainty, retributive justice, and restorative values can be achieved. Islamic law provides relevant inspiration in this regard, as the mechanisms of *diyat* and *afw* demonstrate that punishment can go hand in hand with forgiveness and social restoration.³¹ This principle can be used as a basis for future legislative policy reforms to be more humane and responsive to the needs of society.

An analysis of Article 235 of the Traffic and Road Traffic Law shows that the prohibition on the application of restorative justice in traffic accidents resulting in death is rooted in the

²⁶John Braithwaite, *Restorative Justice and Responsive Regulation*, (New York: Oxford University Press, 2002), p. 19..

²⁷Harkristuti Harkrisnowo, "Restorative Justice in the Indonesian Criminal Justice System," *Journal of Law & Development*, Vol. 39 No. 3 (2009), p. 289.

²⁸David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, (Chicago: University of Chicago Press, 2001), p. 74.

²⁹Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Juz VII (Beirut: Dar al-Fikr, 2005), p. 556.

³⁰Mark Umbreit, *Restorative Justice Dialogue: An Essential Guide for Research and Practice*, (New York: Springer, 2011), p. 103.

³¹Muhammad Abu Zahrah, *Al-Jarimah wa al-'Uqubah fi al-Fiqh al-Islami*, (Cairo: Dar al-Fikr al-'Arabi, 1998), p. 145.

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retributive and preventive paradigms of criminal law. This prohibition provides legal certainty, protects lives in the public interest, and prevents discrimination in the application of the law.

However, an overly rigid approach has the potential to neglect the humanitarian and social recovery dimensions. When comparing restorative justice theory and Islamic law on jinayah, diyat, and afw, there appears to be room for a more balanced legal formulation. Therefore, going forward, Indonesian legislation needs to consider a hybrid model that integrates legal certainty with restorative values, so that the law serves not merely as an instrument of repression but also as a means of reconciliation and the common good.

Writer argues that the prohibition on the application of restorative justice (RJ), as implied in Article 235 of Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) against perpetrators of traffic accidents resulting in death, reflects the paradigm of Indonesian criminal law, which is still oriented towards retributive justice and formalistic retribution. This regulation places traffic crimes that result in loss of life as a serious crime, so the state feels the need to take a repressive approach. However, upon closer examination, this prohibition raises both legal and sociological problems. Legally, Article 235 of the LLAJ Law does stipulate the obligation of perpetrators of accidents to provide compensation to the victim's family, but at the same time, it still leaves room for criminal prosecution without considering the possibility of reaching a peaceful agreement that can restore the situation of both victims and perpetrators. Sociologically, this prohibition has the potential to ignore the reality that many victims' families actually prefer a peaceful resolution based on an apology, adequate compensation, and the restoration of social relations rather than simply seeing the perpetrator sentenced to prison.

Also believes that criminal law should not only be punitive, but also restorative. In the context of traffic accidents that result in death, the majority of perpetrators do not have malicious intent (*mens rea dolus*), but rather due to negligence (*culpa*). Within the framework of the Theory of the Purpose of Punishment, errors arising from negligence should receive proportional sanctions that not only emphasize a deterrent effect but also prioritize restoring social balance. Therefore, the absolute rejection of the restorative justice mechanism in Article 235 of the Traffic and Road Traffic Law can be considered inconsistent with global legal developments. Several modern jurisdictions, such as New Zealand and Canada, have successfully integrated RJ into certain traffic cases while still providing space for the victim's family to determine the settlement option according to their best interests.

Furthermore, when viewed from an Islamic legal perspective, the prohibition on the application of RJ in traffic accidents that result in death is potentially inconsistent with the principles of diyat and afw. In Islamic law, criminal acts that result in loss of life due to negligence (*qatl al-khata'*) are placed within a settlement framework that emphasizes compensation (diyat) and forgiveness of the victim's family (afw) rather than imprisonment. Therefore, when Article 235 of the LLAJ Law closes the door to the application of RJ, normatively, the regulation does not reflect the values of substantive justice as recognized in Islamic law and in modern justice theory. The author believes that the state should strive to harmonize national law with these universal principles, so that traffic criminal law is not trapped in a paradigm of mere retaliation, but can provide restitution for all parties.

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Based on the above description, the author argues that the prohibition on the application of restorative justice in Article 235 of the Traffic and Road Traffic Law needs to be reviewed. The state should differentiate between crimes committed with malicious intent and crimes arising from negligence. With this differentiation, traffic accident cases that are purely due to negligence can be given space to be resolved through the RJ mechanism, as long as the victim's family agrees, the perpetrator demonstrates good faith in taking responsibility, and fair compensation has been agreed upon. This reform does not mean eliminating the perpetrator's obligation to take responsibility, but rather places that responsibility within a more humane and just framework, and in line with the values of deliberation, kinship, and reconciliation that exist within Indonesian society.

3.2. Police Practices in Facilitating Restorative Justice in Traffic Accident Cases with Fatalities

1) Normative Context and Empirical Practice

Normatively, Article 235 of Law Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ Law) stipulates that traffic accidents resulting in death are criminal acts that must be processed according to criminal law.³² This norm emphasizes that the loss of life not only causes individual harm but also constitutes an attack on the public interest. However, in practice, police often facilitate the resolution of accident cases through restorative justice mechanisms, even though this is not textually supported by Article 235 of the Traffic and Road Traffic Law.³³

This phenomenon demonstrates the tension between the law on the books and the law in action. The police, as the spearhead of law enforcement, often face a dilemma when the victim, the perpetrator, and their families have reached a peace agreement.³⁴ On the one hand, the police are obligated to firmly enforce the law; but on the other hand, they are also required to maintain social harmony, accommodate the interests of all parties, and respond to the aspirations of the community, which prioritizes peace.

2) Sociological Factors in the Implementation of Restorative Justice by the Police

Several sociological factors motivate police to facilitate restorative justice in traffic accidents involving fatalities. First, in Indonesian culture, dispute resolution often prioritizes deliberation and peace.³⁵ When the victim's family has received an apology and compensation, forcing the criminal process to continue is considered an action that is not in accordance with local values.

Second, police officers often face social pressure from the public who demand a quick and peaceful resolution, so as not to cause prolonged conflict.³⁶ Post-accident social tensions can trigger horizontal conflict between the victim's family and the perpetrator, so the police view mediation through a restorative approach as a more pragmatic solution.

³²Law Number 22 of 2009 concerning Traffic and Road Transportation, Article 235.

³³Lilik Mulyadi, *Restorative Justice in the Criminal Justice System*, (Jakarta: Prenadamedia, 2017), p. 88.

³⁴Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law*, (Yogyakarta: Genta Publishing, 2009), p. 65.

³⁵Soerjono Soekanto, *Main Points of Legal Sociology*, (Jakarta: Rajawali Pers, 2002), p. 72.

³⁶Muladi, *Selected Chapters on the Criminal Justice System*, (Semarang: UNDIP Publishing Agency, 1995), p. 54.

Third, the restorative approach is also seen as more humane, especially if the perpetrator is someone who does not have malicious intent, but is simply negligent.³⁷ In such situations, harsh punishment is considered not to bring greater social benefits, and even has the potential to increase the suffering of the perpetrator's family.

3) Restorative Justice Theory Perspective

From the perspective of restorative justice theory, the steps taken by police to facilitate peace are in line with the paradigm that justice is not only achieved through punishment, but also through restoration.³⁸ Restorative justice emphasizes three key elements: victim involvement, perpetrator responsibility, and reparation. In the context of traffic accidents, a peaceful resolution facilitated by the police can fulfill all three elements.

However, the application of this theory in practice is still informal and often clashes with positive legal regulations.³⁹ Police often resort to peaceful means such as written agreements or apologies, but these lack strong normative legitimacy. This demonstrates a gap between practical needs on the ground and the rigidity of legal regulations.

4) Perspective of the Theory of the Purpose of Punishment

When viewed from the theory of the purpose of punishment, the practice of police facilitating restorative justice can be seen as an effort to prioritize the goals of resocialization and social recovery.⁴⁰ Punishment is no longer understood solely as retribution, but as a means to achieve social order. By facilitating peace, police officers are actually striving to create social order and prevent further conflict.

In addition, punishment that only emphasizes repressive aspects often leads to overcrowding in correctional institutions and is ineffective in providing a deterrent effect.⁴¹ Thus, the choice to facilitate restorative justice reflects the pragmatic rationality of law enforcement officers in balancing legal certainty, justice, and expediency.

5) Islamic Law Perspective on Jinayah, Diyat, and Afw

In Islamic law, cases of traffic accidents that result in death can be equated with cases of murder due to negligence (qatl al-khata').⁴² In this case, the sanction imposed is not qisas, but rather diyat, or compensation, which the perpetrator must pay to the victim's family.

³⁷Barda Nawawi Arief, *Criminal Law Policy*, (Jakarta: Prenadamedia, 2010), p. 122.

³⁸John Braithwaite, *Restorative Justice and Responsive Regulation*, (Oxford: Oxford University Press, 2002), p. 19.

³⁹Harkristuti Harkrisnowo, "Restorative Justice in Law Enforcement Practices in Indonesia," *Indonesian Journal of Criminology*, Vol. 7, No. 1 (2010), p. 5.

⁴⁰Andrew Ashworth, *Sentencing and Criminal Justice*, (Cambridge: Cambridge University Press, 2015), p. 77.

⁴¹Arief Gosita, *Problems of Crime Victims*, (Jakarta: Akademika Pressindo, 2009), p. 93.

⁴²Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Juz VII (Beirut: Dar al-Fikr, 2005), p. 556.

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Furthermore, the victim's family has the right to grant afw (forgiveness), which legally terminates the criminal prosecution.⁴³

On this basis, the practice of police officers facilitating peace through payment of compensation or apologies has moral and spiritual legitimacy from an Islamic legal perspective.⁴⁴ Although Indonesian positive law does not fully accommodate this, the reality that the majority of Indonesian society is Muslim means that this approach has social support and is considered in accordance with the values of substantive justice.

4. Conclusion

Based on the results of the discussion, it can be emphasized that the prohibition on the application of restorative justice to perpetrators of traffic accidents that cause fatalities as regulated in Article 235 of the Traffic and Road Transportation Law is based on the principle of legality, protection of human life as the most important legal interest, and the paradigm of punishment that is still predominantly oriented towards retributive justice. This regulation is intended to guarantee legal certainty and maintain consistency in the treatment of cases involving the loss of life. However, the discussion shows that this provision raises legal, sociological, and philosophical problems when faced with the need for a more just, humane, and appropriate solution to the legal culture of Indonesian society. On the other hand, the practice of law enforcement officers, particularly the police, who continue to facilitate the resolution of traffic accident cases using restorative justice mechanisms despite being contrary to Article 235 of the LLAJ Law demonstrates a strong push from the values of substantive justice, the goal of punishment that is oriented towards recovery, and alignment with the principles of Islamic law through the concepts of jinayah, diyat, and afw. This practice reflects the urgent need for the reconstruction of legislative policies that are able to integrate formal justice and substantive justice, thereby creating a legal system that is more adaptive, just, and in accordance with the social and religious values of Indonesian society.

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