

Settlement of Traffic Accidents Resulting in Death Using a Restorative Justice Approach

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Abstract. *Traffic accidents resulting in fatalities are a serious problem that not only causes material losses, but also leaves trauma for the victim's family. The criminal justice system often does not fully provide justice for all parties involved. The restorative justice approach is present as an alternative in handling these accident cases, where the main focus is on the recovery and fulfillment of the needs of the victim and the perpetrator, through a process of mediation and reconciliation aimed at reaching a peaceful agreement. This study uses a qualitative method with a descriptive approach, which aims to understand the role of the restorative justice approach in resolving traffic accident cases that result in fatalities. Data were obtained through in-depth interviews with law enforcement officers, the victim's family, and the perpetrator of the accident. Data analysis was carried out thematically to identify important patterns in the process of resolving cases through a restorative approach. The results of the study indicate that the restorative justice approach can provide a more balanced sense of justice for all parties involved. This approach allows the perpetrator to be held accountable for their actions and provide compensation to the victim's family. In addition, this approach also helps restore damaged social relationships and reduces the potential for further conflict. Thus, restorative justice can be an effective alternative in the criminal justice system related to traffic accident cases.*

Keywords: *Accidents; Mediation; Restorative; Reconciliation.*

1. Introduction

The role of law in social, national and state life is so important that legal development is made a separate field. This step has the intention that the development of the legal field as the highest supremacy in a state of law, requires independence so that the function of law can be carried out optimally. Law enforcement and justice are a series of long processes and can involve sharing the

authority of law enforcement agencies/apparatus. "The purpose of the law has three elements, namely: legal certainty, benefit and justice".¹ The Republic of Indonesia Police (Polri) is one of the state apparatuses that has a position and role as a law enforcer, especially tasked with maintaining security within the country. Inclusive in its implementation is, preventing and overcoming criminal acts and violations. Thus the role of the Polri is not just law enforcement, but is also required to play a role in preventing social pathology with various patterns and variations.

Traffic conditions in the Kendari City area are quite dense, so accidents, both minor and serious, that cause people to be injured or die are very likely to occur. Traffic accidents that result in injuries or cause the death of others have been regulated in Articles 359 and 360 of the Criminal Code. It is possible that victims or heirs who are harmed in an accident case do not want the case to be continued because there has been peace with the perpetrator of the accident, or because the victim has received compensation from the perpetrator of the accident and feels that it is enough and does not want to prolong the case. Compensation as a form of good faith from the perpetrator can be a reason to reduce the sentence, but not a reason to eliminate the criminal element. At the prosecution level in the Prosecutor's Office, there is also the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Article 1 of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 states: Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation.

In addition, there is also a Decree of the Director General of the General Courts No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts. One of the SEMAs in question is Supreme Court Regulation Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code. There is also a Joint Memorandum of Understanding between the Chief Justice, Minister of Law and Human Rights, Attorney General, Chief of Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Adjustment of the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Implementation of Restorative Justice. The concept of Restorative justice basically contains a measure of justice that no longer refers to the theory of equal retribution from the victim to the perpetrator (either physically, psychologically or through punishment), but the painful act is healed by providing support to the victim and requiring the perpetrator to be responsible, with the help of family and society if necessary. In cases of traffic

¹Soedikno Mertokusumo, *Understanding Law: An Introduction*, Liberty, Yogyakarta, 1988, p. 14

accidents, the concept of restorative justice can also be applied by involving the victim, the perpetrator, and the victim's family and the perpetrator's family, so that it does not need to be resolved through litigation. This can be done at the Polres level or Polsek level because the Police have the authority called discretion. Based on this background, the author is interested in conducting research on "Resolving Traffic Accidents Resulting in Victim Death with a Restorative Justice Approach".

Traffic accidents resulting in fatalities are a complex and profound problem in modern society. The high number of traffic accidents, especially those resulting in death, not only causes grief for the families of the victims but also creates a heavy social burden. The approach commonly used in handling traffic accident cases is to enforce criminal law which aims to provide sanctions for the perpetrators. However, this system is often unable to provide a sense of justice for the parties involved. Therefore, the restorative justice approach is seen as an alternative solution that focuses on resolving conflicts with the main goal of restoring the relationship between the victim and the perpetrator, as well as improving the social impact caused by the accident. Philosophically, restorative justice is rooted in the view that justice is not only about giving punishment, but also providing recovery for the affected parties. This principle is in line with the values contained in Pancasila, especially the second principle which emphasizes the values of just and civilized humanity. Through this approach, the law is not only seen as a tool to create a deterrent effect for the perpetrators, but also as a means to achieve peace and balance in society. This concept of restorative justice seeks to minimize conflict and provide an opportunity for the perpetrator to atone for his or her wrongdoing in a more constructive way, such as reconciling with the victim's family and making a positive contribution to the community.²

Legally, the concept of restorative justice has found a place in various laws and regulations in Indonesia, both in criminal law and civil law. In Law No. 22 of 2009 concerning Road Traffic and Transportation (LLAJ), for example, there is room for mediation and out-of-court settlement in accident cases involving fatalities. This law opens up the possibility for a more humane and fair approach by considering the interests of victims, perpetrators, and society as a whole. In addition, the Supreme Court in its various decisions has also increasingly provided space for the restorative justice approach, which shows a paradigm shift in the Indonesian justice system.³Sociologically, the restorative justice approach aims to reduce the negative impacts arising from traffic accidents on the victim's family and society.⁴ In many cases, the application of the formal criminal system actually makes things worse, both for the victim's family and the perpetrator. For example, a long and

²Munir, Muhammad. *Restorative Justice: Theory and Application in the Indonesian Justice System*. Bandung: PT Remaja Rosdakarya, 2018.

³Law No. 22 of 2009 concerning Road Traffic and Transportation, Article 240.

⁴man Faturrahman and Bambang Tri Bawono, "Application of Restorative Justice to Solution of Traffic Accidents," *Jurnal Daulat Hukum* 4, no. 1 (2021): 27.

emotional trial process can cause additional trauma for the victim's family, while the perpetrator may not get the opportunity to reflect and make amends directly to the injured party. Restorative justice allows for dialogue and mediation between the perpetrator and the victim's family, so that the conflict can be resolved in a more peaceful and productive way.⁵

In Indonesia, the application of the restorative justice approach in traffic accident cases resulting in fatalities is still in its early stages. However, initiatives to expand the scope of restorative justice in various areas of criminal law are increasingly being strengthened by government policies and encouragement from the community. With the support of law enforcement agencies, such as the police and prosecutors, it is hoped that restorative justice can be an effective solution in reducing social conflicts arising from traffic accidents and providing an opportunity for perpetrators to correct their mistakes more meaningfully.⁶The restorative justice approach is not only beneficial for the parties involved, but also for society in general. In this way, society can see that the legal system functions not only as a law enforcement tool, but also as a mechanism that promotes social harmony. By prioritizing the aspects of recovery and reconciliation, restorative justice in cases of traffic accidents resulting in fatalities is expected to provide justice that is more holistic and relevant to human values.⁷Based on the background, this study focuses on two main problems. First, how can efforts to resolve traffic accidents that result in fatalities be carried out through a restorative justice approach. Second, what are the obstacles faced in resolving traffic accidents, and solutions that can be applied using a restorative justice approach.

In line with the formulation of the problem, this study aims to examine and analyze efforts to resolve traffic accidents that result in fatalities using a restorative justice approach. In addition, this study also aims to examine and analyze the obstacles faced and solutions that can be applied in resolving traffic accident cases through a restorative justice approach.

2. Research Methods

This study uses a sociological legal approach method, by examining the applicable legal provisions and the reality that occurs in society. This study is descriptive analytical, which aims to analyze facts in order to obtain a general picture of the problem and examine legal facts related to the qualification of narcotics abuse crimes by law enforcement officers based on progressive law in Indonesia. The types of data used include primary data and secondary data. Primary data is obtained directly from the field through respondents related to the problems

⁵Huda, Chairul. *Criminal Law Politics: Perspectives on the Development of Indonesian Criminal Law*. Jakarta: Kencana, 2015.

⁶Supreme Court Decision of the Republic of Indonesia No. 1 of 2021 concerning Guidelines for the Implementation of Restorative Justice.

⁷Waluyo, Bambang. *Restorative Justice in the Indonesian Criminal Justice System*. Yogyakarta: Pustaka Pelajar, 2020.

studied, while secondary data is obtained from legal materials that include primary, secondary, and tertiary legal materials. The primary legal materials used include the 1945 Constitution, Law Number 5 of 1997 concerning Psychotropics, Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), Law Number 35 of 2009 concerning Narcotics, and the Supreme Court Circular (SEMA) Number 4 of 2010. Meanwhile, secondary legal materials include expert opinions taken from literature, law books, and scientific articles, and tertiary legal materials in the form of legal dictionaries and the great dictionary of the Indonesian language. Data collection techniques are carried out through literature studies and field studies. Literature studies include the collection and analysis of materials from various sources such as books, laws and regulations, and other literature. Field studies are conducted through direct observation and guided free interviews with sources, such as the Chief Justice, the Chief Prosecutor, and the Head of the National Narcotics Agency (BNN), who have the competence and relevance to this research. Data obtained from document and field studies are then analyzed qualitatively. Analysis is carried out by systematically compiling data to provide clarity regarding research problems, then drawing conclusions deductively, from the general to the more specific.

3. Results and Discussion

3.1. Efforts to Resolve Traffic Accidents Resulting in Death Using a Restorative Justice Approach

The Restorative Justice approach provides an alternative resolution of legal cases through dialogue and reconciliation efforts, especially for traffic accident cases that result in fatalities. The main focus of this approach is recovery, both from the victim and the perpetrator, by considering aspects of justice that are not only based on punishment alone, but also the restoration of social relations that are disrupted by the accident.⁸

First, in the perspective of Restorative Justice, traffic accident cases resulting in death can be resolved by involving all affected parties, namely the victim's family, the perpetrator, and the community. The police can facilitate meetings between the victim's family and the perpetrator to build honest and open communication about the feelings and impacts caused.⁹This effort can help reduce feelings of resentment from the victim's family and allow the perpetrator to realize the impact of his actions.

Second, reconciliation efforts can be carried out by prioritizing the perpetrator's sense of responsibility for the consequences of the accident. Through this approach, the perpetrator is invited to admit his mistake in front of the victim's family, and commit not to repeat his actions. This process not only creates a sense

⁸Zehr, Howard. *The Little Book of Restorative Justice*. Good Books, 2002.

⁹Braithwaite, John. *Restorative Justice and Responsive Regulation*. Oxford University Press, 2002.

of justice for the victim's family, but also provides an opportunity for the perpetrator to contribute to recovery.¹⁰

Furthermore, the presence of a mediator in the dialogue process is very important to ensure that communication between the victim and the perpetrator goes well. The mediator, who in this case can come from the police or social institutions, is tasked with maintaining the balance of the dialogue process so that both parties can express their feelings and hopes comfortably. With mediation, it is hoped that the emotions of the victim's family can be channeled constructively, so that they feel heard and appreciated.¹¹

Fourth, one of the main principles in Restorative Justice is the recovery or restoration of the victim and his/her family. At this stage, the police and mediators can help the perpetrator in providing compensation, such as financial assistance or other forms of support agreed upon by both parties. This step can help reduce the sense of loss of the victim's family and rebuild their lives after the tragic event.¹²

Fifth, Restorative Justice also provides an opportunity for perpetrators to be involved in traffic education programs. Through this program, perpetrators can realize the importance of traffic safety and the impact of negligence that has the potential to claim lives. Thus, perpetrators are expected to become more responsible individuals in traffic.¹³

The implementation of Restorative Justice is also in line with police policy which prioritizes a more humanist approach.¹⁴This approach provides a solution that does not only rely on punishment but also encourages perpetrators to be socially responsible. With this approach, it is hoped that fatal traffic accident cases can be handled in a more just manner.¹⁵

3.2. Obstacles and Solutions to Resolving Traffic Accidents Resulting in Death Using a Restorative Justice Approach

The restorative justice approach in the context of handling traffic accidents resulting in fatalities aims to achieve justice that is not only oriented towards punishment, but also towards the recovery of victims and perpetrators. This approach involves communication between the perpetrator and the victim's family, with the hope that both parties can understand the impact of the accident, share the suffering, and reach a fair and humane agreement. In cases of traffic

¹⁰Daly, Kathleen. "Restorative Justice: The Real Story." *Punishment & Society*, vol. 4, no. 1, 2002, pp. 55-79.

¹¹Strang, Heather. *Restorative Justice Programs in Australia*. Criminology Research Council, 2001.

¹²Van Ness, Daniel, and Karen Heetderks Strong. *Restoring Justice: An Introduction to Restorative Justice*. Anderson Publishing, 2006.

¹³McCold, Paul, and Ted Wachtel. "In Pursuit of Paradigm: A Theory of Restorative Justice." *Restorative Justice: Theoretical Foundations*, 2003.

¹⁴ndra Jaya Syafputra, Maryanto Maryanto, and Jawade Hafidz, "Implementation of Restorative Justice in Traffic Accident Settlement," *Law Development Journal* 3, no. 2 (2021): 399.

¹⁵Johnstone, Gerry, and Daniel W. Van Ness. *Handbook of Restorative Justice*. Routledge, 2007.

accidents resulting in death, restorative justice can be a more humane alternative than the retributive justice approach which only focuses on punishment. This approach can provide an opportunity for perpetrators to show remorse and take responsibility for their actions, which cannot always be achieved through conventional punishment.

However, the implementation of restorative justice in traffic accident cases has challenges. One of the biggest obstacles is the difficulty in getting the consent of the victim. Not all families of the victims are ready to accept this approach, especially if they have experienced deep trauma and grief. The tendency to expect strict punishment for the perpetrator may be higher, making it difficult for authorities to offer alternatives that emphasize relationship restoration. In addition, the uncertainty about whether the perpetrator is truly sorry and willing to take responsibility can be an obstacle in reaching a peaceful agreement between the parties.

From the police side as law enforcers, one of the obstacles is the regulatory framework that does not fully support the use of restorative justice in traffic cases that cause death. The Indonesian legal system still predominantly uses a retributive approach, where the perpetrator must undergo a legal process regulated by criminal sanctions. In this case, the police must consider existing regulations and adjust them so that they do not conflict with applicable laws, while still opening up space for a restorative approach if possible.

The solution that can be attempted is to facilitate an initial dialogue between the perpetrator and the victim's family, facilitated by an independent mediator and the police. This dialogue needs to be focused on a shared understanding of the feelings, conditions, and impacts of the accident. In the mediation session, the police can also assist so that the process runs safely and orderly. The open dialogue process is expected to reduce tensions and allow for empathy between the parties, where the perpetrator can show his regret and apologize directly to the victim's family.

In addition, the involvement of community parties, such as community leaders, religious leaders, or traditional leaders, in the restorative process can be a solution. Their presence can provide a sense of justice and convince the victim's family that this approach is not to protect the perpetrator, but to achieve a better resolution for all parties. Restorative justice is often successful when there is support from the community that supports the recovery of the victim and the perpetrator. From a restorative justice perspective, the police can also seek forms of restitution that are relevant to the needs of the victim's family. For example, the perpetrator can offer compensation in the form of financial assistance or contribute to mutually agreed social activities, with the aim of restoring a sense of justice to the bereaved family. This restitution must be voluntary, agreed upon by the victim's family and not as compensation for the lives lost, but rather as a form of social responsibility from the perpetrator.

This approach can also reduce the possibility of revenge from the victim's family against the perpetrator, which often occurs when the formal legal process is considered to not fulfill a sense of justice. In some cases, the victim's family who feels respected and given a choice in the legal process will find it easier to accept the situation. Restorative justice can help reduce horizontal conflicts that may arise as a result of dissatisfaction with court decisions or legal processes.

Furthermore, effective restorative justice requires special training for police as mediators so that they are able to carry out this approach well. Police must have a deep understanding of the principles of restorative justice and good communication skills so that they can be facilitators in productive and fair mediation for both parties.

In addition, public education about the concept of restorative justice needs to be strengthened so that they understand that this approach is not to avoid punishment for the perpetrator, but to create balance and restore a sense of justice. With a better understanding, it is hoped that potential victim families will be more open to accepting this more humane solution.

4. Conclusion

The restorative justice approach in handling traffic accident cases resulting in fatalities offers a more comprehensive and humane solution. By involving victims, perpetrators, and the community in the settlement process, justice does not only focus on punishment, but also on restoring social relationships damaged by the accident. This approach encourages perpetrators to understand the impact of their actions and commit not to repeat the same mistakes. In addition, restorative justice provides an alternative solution that focuses on restoring relationships and healing emotional wounds for both parties. However, there are a number of obstacles in its implementation, such as resistance from the victim's family, an inadequate regulatory framework, and challenges in productive mediation. However, if implemented properly and supported by community understanding and participation, this approach has the potential to be an effective solution in creating more holistic justice. To support the implementation of restorative justice, the police need to develop a professional mediation system by involving trained psychologists or mediators to facilitate the reconciliation process. In addition, the community also needs to be encouraged to be more open to this approach by understanding that justice does not always have to be realized through criminal punishment, but also through ongoing recovery and reconciliation efforts. The police are advised to hold special training in restorative mediation, prepare guidelines for the implementation of restorative justice in traffic accident cases, and increase the socialization of this concept to the community. With these steps, restorative justice is expected to become one of the main choices in creating a more humane and adaptive justice system to the needs of the community.

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