

Termination of Prosecution of Road Traffic and Transport Crimes Based on Restorative Justice

Dian Susanto Wibowo¹⁾ & Arpangi²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia (UNISSULA),
E-mail: sanesdian@yahoo.com

²⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang (UNISSULA), Indonesia,
E-mail: arpangi@unissula.ac.id

Abstract. *The aim is to analyze the termination of prosecution of traffic and road transportation crimes based on restorative justice. The research method used is a sociological juridical approach to study and find the legal reality experienced in the field which is based on problems regarding legal matters and existing realities. The results of the study of the termination of prosecution of traffic and road transportation crimes based on restorative justice are a form of criminal law reform that reflects a new paradigm of law enforcement in Indonesia from a retributive justice orientation to restorative justice. This policy aims not merely to punish the perpetrator, but to restore social harmony, restore balance between the perpetrator, victim, and society, and realize humane justice in accordance with the values of Pancasila.*

Keywords: *Justice; Restorative; Stoppage; Transport.*

1. Introduction

The foundation of the Indonesian state is Pancasila and the 1945 Constitution of the Republic of Indonesia (UUDNRI), which is the ideological and philosophical foundation for all aspects of national and state life in Indonesia. The existence of Pancasila is the basis for the drafting of the constitution, the formation of legislation, government policies, and the moral and ethical guidelines for community life. In its implementation, it serves as a guideline, in accordance with Article 27 paragraph (1) of the 1945 UUDNRI which states: Citizens have equal standing before the law and government and are obliged to uphold the law and government without exception. Thus All citizens have equal standing before the law (equality before the law).

There is a guarantee of non-discriminatory legal treatment contained in Article 28D paragraph (1) UUDNRI 1945, that Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law, including in violations of traffic and road transportation crimes.. So that there

Law enforcement against road traffic crimes is part of the state's efforts to create order, security and safety in traffic.

Law enforcement is an effort to address crime rationally, fulfilling a sense of justice and effectively. In order to address crime, various means as a response can be given to perpetrators of crime, in the form of criminal and non-criminal legal means, which can be integrated with one another. If criminal means are called upon to address crime, it means that criminal law policy will be implemented, namely holding elections to achieve criminal legislation results that are appropriate to the circumstances and situations at a certain time and for the future.¹

Law enforcement in Indonesia is fundamentally aimed at creating justice, certainty, and legal benefits for all members of society. However, in practice, criminal law enforcement often creates new problems when the legal process focuses solely on punishing the perpetrator without considering the restoration of relationships between the perpetrator, the victim, and the community. This is also evident in the handling of traffic and road transportation crimes, where the majority of cases end with criminal convictions, despite the potential for resolution through restorative justice approaches.²

According to Lamintang, in his book "The Basics of Criminal Law in Indonesia," violations are defined as "People generally only become aware that an act constitutes an unlawful offense and is therefore punishable after the act is declared prohibited by law. Furthermore, there is no requirement for a complaint to be filed as a prerequisite for prosecution."³

The Indonesian legal system, in enforcing traffic law is regulated by various regulations, including the Criminal Code (KUHP), although it does not specifically regulate criminal acts or criminal acts (*strafbaarfeit*) in traffic. However, traffic crimes are regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ Law). In the LLAJ Law, traffic crimes contain 44 articles, which are contained in Chapter XX. The criminal provisions are between Articles 273 to 317 of the LLAJ Law.

Traffic accidents, for example, often occur not because of the perpetrator's malicious intent (*mens rea*), but rather due to negligence (*culpa*) or carelessness. In such contexts, retributive punishment sometimes fails to substantively resolve the problem, especially when the victim or their family has forgiven and agreed to

¹Bara Nawawi Arief. (2002). Criminal Law Policy. Bandung: PT. Citra Aditya Bakti, p. 109

²Sarwadi, Bambang Tri Bawono. "Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia." Journal of Legal Sovereignty Vol. 3 No.4 (2020), Url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13145> accessed October 23, 2025

³PAF Lamintang. (1997). Fundamentals of Indonesian Criminal Law. Bandung: Citra Aditya Bakti, p. 212

reconcile with the perpetrator. Therefore, a more humane and just legal approach is needed, including peaceful out-of-court settlements as an alternative, as stipulated in the concept of restorative justice.⁴

The application of restorative justice in terminating criminal prosecutions in Indonesia began to gain a strong legal basis following the issuance of Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation authorizes prosecutors to terminate prosecution of certain criminal cases if a peace agreement has been reached between the perpetrator and the victim, and certain conditions are met, such as a relatively light penalty and restitution of the victim's losses. Based on this description, this study is important to analyze the termination of prosecution of traffic and road transportation crimes based on restorative justice.⁵

2. Research Methods

Writing Methods Used sociological juridical, a research approach that seeks to discover legal realities experienced in the field or an approach that is based on problems concerning legal matters and existing realities. Sociological juridical legal research primarily examines primary data as well as data sourced from secondary data.⁶ This research is more appropriate to use sociological juridical, because in the formulation of the problem the data obtained is more accurate, by using this approach it is intended to obtain a clear picture and understanding of the problems that will be discussed in the research.⁷ Analytical descriptive research specifications address a problem or focus on a problem at the time the research is conducted, and the results are processed and analyzed. Data sources consist of primary and secondary data. Legal sources consist of primary, secondary, and tertiary legal materials. The data collection method consists of three stages. First, researchers collect data through observation and questioning; second, they conduct library research by reading, reviewing, and analyzing literature, laws and regulations, articles, or writings related to the research topic.⁸ The data analysis method was conducted qualitatively and presented in the form of words or

⁴Marlina. (2010). Introduction to the Concept of Diversion and Restorative Justice in Criminal Law. Medan: USU Press, p. 28

⁵Ahmad Faizal Azhar. "Implementation of the Concept of Restorative Justice in the Criminal Justice System in Indonesia." MK: Jurnal Kajian Hukum Islam Vol. 4, No. 2 (2019), URL: <https://www.syekh Nurjati.ac.id/jurnal/index.php/mahkamah/article/view/4936> accessed October 21, 2025.

⁶Ronny Hanitijo Soemitro. (2006). Legal Research Methodology and Jurimetrics. Jakarta: Ghalia Indonesia, p. 10

⁷Hilman Hadi Kusuma. (2012). Methods for Writing Legal Papers or Theses. Bandung: CV. Mandar Maju, p. 34

⁸Abdulkadir Muhammad. (2004). Law and Legal Research, First Edition, Bandung: Citra Aditya Bakti, p. 50

sentences. Qualitative data were analyzed using a deductive approach. One way to draw specific conclusions about general matters is by using an interactive analysis model. Therefore, the qualitative data analysis method collects and selects data from literature studies.⁹

3. Results and Discussion

The criminal justice system in Indonesia cannot be separated from the general function of law in society. In the context of criminal law, the law's function is to maintain order, provide justice, and protect the common good. Furthermore, the sentencing system is the legal regulation related to criminal sanctions and punishment.

The law exists to regulate society appropriately and beneficially by establishing what is required or permitted, as well as what is and is not lawful. Legal actions are not questionable; what matters are unlawful actions, both those that actually occur (*onrecht in actu*) and those that may occur (*onrecht in potentie*).¹⁰ Therefore, in essence, the law must be used as a solution to resolve problems concerning individuals and groups, especially in dealing with problems related to violations of the law itself. In this regard, Subekti and Tjitro Soedibyo stated that:

Criminal law is punishment. Criminal law itself is a tool, a means to achieve the goal of punishment. The problem of criminal acts is a humanitarian and social problem that is constantly faced by every form of society. Where there is society, there is criminal activity.¹¹

In general, the term "criminal" is often used interchangeably with the term "punishment." However, the two terms actually have different meanings. Punishment is a general term, meaning a sanction that causes suffering or misery intentionally inflicted on someone. Meanwhile, "criminal" is a specific term related to criminal law. Muladi emphasized that: "As a specific term, criminal still shares similarities with the general term as a sanction or misery that causes suffering."¹²

Law enforcement in Indonesia is experiencing a paradigm shift from a system oriented towards retributive justice to a system that emphasizes restorative justice.¹³ One concrete form of this shift is the implementation of a policy of terminating prosecution based on restorative justice by the Republic of Indonesia's Attorney General's Office, as stipulated in Attorney General's

⁹Ibid,

¹⁰Sudarto. (1986). *Selected Chapters on Criminal Law*. Bandung: Alumni, p. 111

¹¹Barda Nawawi Arief. (2005). *Anthology of Criminal Law Policy*. Bandung: Kencana Prenada, p. 98

¹²Andi Hamzah. (1987). *Criminal System and Punishment in Indonesia*. Jakarta: Aksara Baru, p. 1

¹³ Muhammad Ridwan Lubis. "The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice." *Journal of Legal Sovereignty* Vol. 5 No. 4, (2022), Url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/24357> accessed October 22, 2025

Regulation Number 15 of 2020. In the context of traffic and road transportation crimes, a restorative justice approach is crucial because most violations involve culpa or negligence, not malicious intent (*mens rea*). Therefore, resolving the case using a restorative and conciliatory approach is considered to better reflect a sense of justice for all parties involved.

TemporaryThe legal basis for terminating prosecution based on the principle of restorative justice in Indonesia can be found in several regulations, including:

- a. Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP), which gives space to the Prosecutor as case controller (*dominus litis*) to determine whether the case is worthy of continuing to court or being stopped.
- b. Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, which specifically regulates the mechanism for terminating prosecution based on restorative justice.
- c. Law Number 22 of 2009 concerning Traffic and Road Transportation, which regulates criminal acts in the field of traffic and road transportation.
- d. Circular Letter of the Attorney General of the Republic of Indonesia Number 01 of 2021, which emphasizes the importance of applying the principles of restorative justice in cases that meet the requirements.

Through these regulations, the Prosecutor's Office is authorized to discontinue prosecution if formal and material requirements are met, such as reconciliation between the perpetrator and victim, the loss has been restitution, and the crime is classified as minor with a penalty of no more than five years in prison. Restorative justice is an approach to resolving criminal cases that focuses on restoring the condition of the victim, perpetrator, and the community affected by the crime. This concept places all parties in a dialogue position to reach a settlement agreement that is considered fair by all parties, rather than solely imposing punishment on the perpetrator.

In the context of traffic crimes, this approach is relevant because:

- 1) Most accidents occur due to negligence without malice.
- 2) The perpetrator usually does not intend fatal consequences, such as injury or death.
- 3) Victims or the victim's family are often willing to forgive if the perpetrator takes moral and material responsibility.¹⁴

¹⁴Yoachim Agus Tridianto. (2015). Restorative Justice. Yogyakarta: Cahaya Atma Pustaka, p. 34

Restorative justice aims not only to punish the perpetrator but also to restore social harmony damaged by the crime. In practice, restorative justice can also be applied to minor criminal cases involving juvenile offenses, women in conflict with the law, narcotics offenses, information and electronic transaction offenses, and traffic offenses.¹⁵ There are criminal cases that ended with restorative justice settlement in traffic crimes. In connection with the prosecution carried out by the Public Prosecutor at the Magetan District Attorney's Office based on the Order of the Head of the Magetan District Attorney's Office Number: PRINT-02 / M.5.32 / Eku.2 / 01 / 2025 dated January 15, 2025 to Facilitate the Peace Process Based on Restorative Justice in Traffic and Road Transportation criminal cases.

Meanwhile, the suspect is suspected of violating Article 310 Paragraph (3) of Law Number 22 of 2009 concerning Road Traffic and Transportation and Article 310 Paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation. However, in reality, the implementation of the settlement of criminal cases of road traffic and transportation is carried out using a restorative justice approach. The reasons include that the settlement of cases emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge. The process of resolving criminal cases will be more effective and in accordance with the principles of fast, simple and low-cost justice and case handling is carried out based on law and conscience.

This regulation allows prosecutors to discontinue prosecution if a settlement has been reached between the victim and the perpetrator, provided that both formal and material requirements are met, such as compensation for losses, a settlement agreement, and the perpetrator not being a repeat offender. In practice at the Magetan District Attorney's Office, the discontinuation of prosecution in traffic cases is often found in cases of minor traffic accidents resulting in property damage or minor injuries. The process is carried out through facilitated mediation between the perpetrator and victim, with assistance from the prosecutor and police. If a settlement is reached, the case is discontinued by law. Therefore, the application of restorative justice in this context is intended to restore social harmony, reduce the burden of cases in court, and provide a faster solution for victims. However, what is crucial is whether the discontinuation of prosecution truly brings a sense of justice to the victim.

The following is an analysis of the Victim's Sense of Justice from the Perspective of Pancasila Justice Theory. According to Yudi Latif, Pancasila justice is integrative, combining individual, social, and transcendental values.¹⁶ Pancasila justice not only

¹⁵Karim. (2019). *Ius Constituendum: Regulation of the Settlement of Minor Criminal Cases Through Restorative Justice*. Surabaya: CV. Jakad Media Publishing, p. 27

¹⁶Yudi Latif. (2014). *The Fountain of Exemplary Role Model: Pancasila in Action*. Jakarta: Mizan, p. 483

prioritizes retributive or distributive justice, but also restorative justice, emphasizing the restoration of relationships, balance, and the common good. Because Pancasila, as a way of life, serves as a guide for all activities and livelihoods in all areas. This means that all behavior and actions of every Indonesian must be imbued with and reflect all of the Pancasila principles, because Pancasila as a way of life is always a unity, inseparable from one another.¹⁷ Justice in Pancasila is based on the Fifth Principle, namely Social Justice for All Indonesian People. Social justice does not look at who, but all people or the Indonesian people who have the rights and guarantees to obtain social justice.

When analyzed using the framework above, the termination of prosecution at the Magetan District Attorney's Office can be said to provide a sense of justice for the victim, to the extent that:

- a) The recovery of the victim's actual losses was achieved. The results of the study showed that the costs of vehicle repairs, medical expenses, or other material compensation were actually provided by the perpetrator.
- b) Victims feel actively involved in the process. It is not just a formality, but the victims are given space to express their aspirations, needs, and willingness to make peace.
- c) Social relations are restored. Apologies, social gatherings, and social reconciliation are important aspects that demonstrate that justice is not just about money, but also about dignity.

Based on the analysis above, the implementation of restorative justice is in line with Pancasila Justice according to Yudi Latif, because it prioritizes the restoration of social relations rather than mere punishment. The resolution of the above cases prioritizes a sense of justice for both victims and perpetrators of the crime, while maintaining a sense of humanity, which can be resolved amicably without having to go through a lengthy legal process. The value of utility is also clearly not achieved if it is resolved at the court level, considering the legal process with a budget sourced from state finances that seems wasteful. If the legal process for traffic crimes only results in the budget sourced from state finances continuing to flow and being wasted because the final outcome of the case is still felt to not fulfill a sense of justice based on humanity and cannot recover the losses experienced by the victim, thus providing no benefit.

¹⁷Moch Najib Yuliantoro, et al., Analysis of the Implementation of Pancasila Social Justice in the Population of Children with HIV/AIDS in Yogyakarta, *Jurnal Filsafat*, Vol. 9 No. 01, 2019. Url: <https://jurnal.ugm.ac.id/wisdom/article/view/40962> accessed October 24, 2025.

4. Conclusion

Based on the description above, it can be concluded that The cessation of prosecutions for traffic and road transportation crimes based on restorative justice is a form of criminal law reform that reflects a new paradigm for law enforcement in Indonesia, shifting from a retributive justice orientation to restorative justice. This policy aims not merely to punish perpetrators, but to restore social harmony, restore balance between perpetrators, victims, and society, and realize humane justice in accordance with the values of Pancasila. From the perspective of Yudi Latif's Pancasila justice theory, justice is not only understood as retribution for wrongdoing (retributive) or formal fulfillment of the law (legal justice), but rather as integral and transcendental justice, which positions humans as moral and social beings. Yudi Latif emphasized that Pancasila justice is rooted in the balance between rights and obligations, individuals and society, and morality and humanity. Therefore, the application of restorative justice in the termination of prosecution reflects the real application of Pancasila justice based on just and civilized humanity (second principle) and social justice for all Indonesian people (fifth principle).

5. References

Journals:

Ahmad Faizal Azhar. "Penerapan Konsep Keadilan Restoratif (*Restorative Justice*) Dalam Sistem Peradilan Pidana Di Indonesia." *Mahkamah: Jurnal Kajian Hukum Islam* Vol. 4, No. 2 (2019), URL : <https://www.syekhnurjati.ac.id/jurnal/index.php/mahkamah/article/view/4936> diakses 21 Oktober 2025.

Muhammad Ridwan Lubis. "The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice." *Jurnal Daulat Hukum* Vol. 5 No.4, (2022), URL: <http://jurnal.unissula.ac.id/index.php/RH/article/view/24357> diakses 22 Oktober 2025.

Moch Najib Yuliantoro, dkk, Analisis Implementasi Keadilan Sosial Pancasila Pada Populasi Anak Penyandang HIV/AIDS Di Yogyakarta, *Jurnal Filsafat*, Vol. 9 No.01 Tahun 2019. URL: <https://jurnal.ugm.ac.id/wisdom/article/view/40962> diakses 24 Oktober 2025.

Sarwadi, Bambang Tri Bawono. "Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia." *Jurnal Daulat Hukum* Vol. 3 No.4 (2020), URL: <http://jurnal.unissula.ac.id/index.php/RH/article/view/13145> diakses 23 Oktober 2025.

Yoachim Agus Tridianto. (2015). *Keadilan Restoratif*. Yogyakarta:Cahaya Atma Pustaka.

Books:

Abdulkadir Muhammad. (2004). *Hukum dan Penelitian Hukum*, Cet. I., Bandung:Citra Aditya Bakti.

Andi Hamzah. (1987). *Stelsel Pidana dan Pemidanaan di Indonesia*. Jakarta:Aksara Baru.

Barda Nawawi Arief. (2002). *Kebijakan Hukum Pidana*. Bandung:PT. Citra Aditya Bakti.

Barda Nawawi Arief. (2005). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung:Kencana Prenada

Hilman Hadi Kusuma. (2012). *Metode Pembuatan Kertas kerja atau Skripsi Ilmu Hukum*. Bandung: CV. Mandar Maju.

Karim. (2019). *Ius Constituendum Pengaturan Penyelesaian Perkara Tindak Pidana Ringan Melalui Restorative Justice*. Surabaya:CV.Jakad Media Publishing.

Marlina. (2010). *Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana*. Medan:USU Press.

P.A.F Lamintang. (1997). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung:Citra Aditya Bakti.

Ronny Hanitijo Soemitro. (2006). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta:Ghalia Indonesia.

Sudarto. (1986). *Kapita Selekta Hukum Pidana*. Bandung:Alumni.

Yudi Latif. (2014). *Mata Air Keteladanan : Pancasila Dalam Perbuatan*. Jakarta:Mizan.

Regulation :

The 1945 Constitution of the Republic of Indonesia

Law No. 8 of 1981 concerning the Criminal Procedure Code

Law Number 22 of 2009 concerning Road Traffic and Transportation (UULLAJ).

Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.