

Procedures for Resolving Traffic Accident Cases Through Restorative Justice

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Abstract. *This study aims to determine and analyze the procedure for resolving traffic accident cases through restorative justice. To determine and analyze the weaknesses of resolving traffic accident cases through restorative justice. This study is a normative juridical type, the method of legislative approach, case approach, the research specifications are descriptive analysis, the data sources used are secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies and analysis techniques using qualitative. The results of the study show that the procedure for resolving traffic accident cases through restorative justice is guided by Law Number 20 of 2025 concerning the Criminal Procedure Code, however, in the application of the restorative justice mechanism for traffic accident crimes, it is only applied as an effort to create a win-win solution between victims and perpetrators, where the provision of compensation to traffic accident victims is described as if it only functions to minimize criminal sanctions, without any improvement in the quality of the perpetrator which is very likely to occur the repetition of the perpetrator's actions (mistakes). There are weaknesses in the legal structure, including a lack of understanding of the concept of restorative justice among law enforcement officers, a lack of coordination between law enforcement agencies, and a lack of infrastructure support. Second, there is a weakness in the legal substance, namely the absence of a limit on the amount of compensation. Third, there are weaknesses in the legal culture, including a lack of public awareness of restorative justice. There is a perception that restorative justice is only for minor cases, even though restorative justice can be applied to various types of cases, including traffic accidents.*

Keywords: Accident; Justice; Restorative; Traffic.

1. Introduction

Traffic accidents generally lack the element of intent, as is the case in other crimes. Even if intent is absent, negligence on the part of the perpetrator can be used as

a basis for criminal penalties. Based on these considerations, resolving traffic accident cases outside the courts through restorative justice mechanisms can be an alternative in resolving traffic accident cases.¹

For example, the Sragen Resort Police processed a restorative justice mechanism in handling a traffic accident case in Sragen Regency involving a truck driver with the initials S and a Vario motorcycle driver with the initials T, who suffered serious injuries to the head and a broken right shoulder. The decision to resolve the case through restorative justice was based on the victim's family forgiving the suspect's actions, and peace had occurred between the two parties with the perpetrator helping with medical expenses amounting to Rp. 55,000,000 (fifty-five million rupiah) and repairing the motorcycle to its original condition.

In another case, the Gowa District Attorney's Office resolved a criminal case through a restorative justice mechanism *for* a traffic accident case involving suspect R Binti H. R (66 years old), a pensioner, and victim R (17 years old), a student. The suspect was accused of violating Article 310 Paragraph (2) of Law of the Republic of Indonesia No. 22 of 2009 concerning Traffic and Road Transportation. The restorative justice mechanism has reached a peaceful agreement between the victim and the suspect without conditions.²

The final example of the Mentok District Court's decision in traffic case Number 8/Pid.Sus/2026/PN Mtk by placing the principle of restoration between the perpetrator and the victim as a central consideration in the verdict. This decision confirms that modern criminal justice is no longer solely oriented towards retributive justice, but rather moves towards a balance between the perpetrator's responsibility and the victim's recovery. By continuing to impose a prison sentence of 3 (three) months, the Panel of Judges shows that restorative justice is not the elimination of criminal responsibility, but rather a mechanism that integrates admission of guilt, restitution of losses, and social reconciliation between the Defendant and the Victim.³

restorative justice mechanisms separately. These include the Indonesian National Police, the Attorney General's Office, and the Supreme Court. The Indonesian National Police regulate restorative justice mechanisms.

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code ends the regulation of *restorative justice mechanisms* that are spread across

¹Fandika Wahyu Ramadhani, Suyatna, Implementation of Restorative Justice in Traffic Accidents Based on the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, *Indonesian Journal of Law and Justice* Volume: 1, Number 4, 2024, p. 2

² <https://www.kejaksaan.go.id/conference/news/6804/read> accessed on May 21, 2026

³ <https://dandapala.com/article/detail/pn-mentok-kedepankan-pemulihan-pelaku-korban-di-kasus-tabrakan-beruntun> accessed on May 23, 2026

the internal regulations of law enforcement institutions. The scope and principles of the application of restorative justice mechanisms based on Article 80 paragraph (1) of the Law concerning the Criminal Procedure Code, state that:

"The Restorative Justice Mechanism can be applied to criminal acts that meet the following requirements:

- a. criminal acts are punishable by a maximum fine of category III or are punishable by a maximum prison sentence of 5 (five) years;
- b. first time crime committed; and/or
- c. does not constitute a repetition of a criminal act, except for criminal acts for which the verdict is a fine or criminal acts committed due to negligence."

Exceptions to the restorative justice mechanism are regulated in Article 82 of the Criminal Procedure Code which states that:

"The Restorative Justice Mechanism is excluded for:

- a. crimes against state security, crimes against friendly countries, heads of friendly countries and their representatives, crimes against public order, and crimes against morality;
- b. criminal acts of terrorism;
- c. criminal acts of corruption;
- d. crimes of sexual violence;
- e. criminal acts punishable by imprisonment of 5 (five) years or more, except due to negligence;
- f. criminal acts against human life;
- g. criminal acts punishable by a special minimum sentence;
- h. certain criminal acts that are very dangerous or detrimental to society; and/or
- i. crimes except for those who have the status of users or abusers.

So far, *restorative justice* has only been applied based on the classification of types of traffic accidents, as regulated in Article 229 of the Traffic and Road Transportation Law, namely minor traffic accidents, moderate traffic accidents and serious traffic accidents with the concept of *restorative justice* only seen as an effort to create a *win-win solution* between victims and perpetrators of criminal

acts (delicts), where the provision of compensation to victims of traffic accidents is described "as if" only functioning to minimize criminal sanctions.⁴

The concept of restorative justice should be understood as Liebmann proposed ⁵: the victim's awareness of forgiving the perpetrator, viewed from a criminal law perspective, is not a justification that can erase the unlawful nature of the act or eliminate criminal sanctions for the perpetrator. Sanctions should be interpreted as an effort to improve the perpetrator and protect society.

Referring to data showing that the cause of traffic accidents is driver quality, this phenomenon contrasts with restorative justice policies, which appear to be limited to considerations aimed at mitigating sentences for defendants. Theoretically, this contradicts the concept of *restorative justice*, which emphasizes balance between the three components: the perpetrator, the victim, and the community.

The impact of *the restorative justice concept* that is not applied properly, *in this case* in traffic accidents, can cause harm to society. Without improving the quality of the perpetrator, it is very possible that the perpetrator's actions (mistakes) will be repeated. Therefore, the application of *the restorative justice concept* should not only provide compensation for victims and cover behavioral improvements for perpetrators to achieve good and correct driving quality, but on the other hand, efforts to improve perpetrators also protect society from future traffic accidents.

Based on the explanation above, a balanced concept is needed for the implementation of restorative justice for perpetrators. This mechanism aims to ensure that *restorative justice mechanisms* are not only viewed as an effort to mitigate sanctions for perpetrators, but also include a concept of perpetrator improvement, also known as a curative method. Based on this background description, the researcher is interested in conducting research in the form of a thesis entitled " Procedures for Resolving Traffic Accident Cases Through Restorative Justice."

Based on the description above, the author will explain the formulation of the problem, namely first, what is the procedure for resolving traffic accident cases through restorative justice Second, what are the weaknesses in resolving traffic accident cases through restorative justice.

2. Research Methods

This research is a normative juridical type using the statutory approach method and case studies, the research specifications are descriptive analysis, data sources

⁴Luh Made Indryani Purnami, "Mechanism for Terminating Criminal Case Investigations Through Restorative Justice Reviewed from Police Regulation Number 8 of 2021." *Jurnal Datin Law* 2 (2), 2023, p. 36

⁵ *Ibid* , p. 25

are obtained from secondary data taken through primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies, and analysis techniques using qualitative.

3. Results and Discussion

3.1 Procedures for Resolving Traffic Accident Cases Through Restorative Justice

Law Number 20 of 2025 concerning the Criminal Procedure Code ends the regulation of *restorative justice mechanisms* that are spread across the internal regulations of law enforcement institutions.

Article 1 Number 21 of the Republic of Indonesia Law Number 20 of 2025 concerning the Criminal Procedure Code, hereinafter referred to as the "Law concerning the Criminal Procedure Code", states:

"Restorative Justice is an approach to handling criminal cases that involves all parties, including the victim, the victim's family, the suspect, the suspect's family, the defendant, the defendant's family, and/or other related parties, with the aim of restoring the original situation."

The scope and principles of implementing the restorative justice mechanism based on Article 80 paragraph (1) of the Law on the Criminal Procedure Code, states that:

"The Restorative Justice Mechanism can be applied to criminal acts that meet the following requirements:

- a. criminal acts are punishable by a maximum fine of category III or are punishable by a maximum prison sentence of 5 (five) years;
- b. first time crime committed; and/or
- c. does not constitute a repetition of a criminal act, except for criminal acts for which the verdict is a fine or criminal acts committed due to negligence."

Exceptions to the restorative justice mechanism are regulated in Article 82 of the Criminal Procedure Code which states that:

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- a. crimes against state security, crimes against friendly countries, heads of friendly countries and their representatives, crimes against public order, and crimes against morality;
- b. criminal acts of terrorism;
- c. criminal acts of corruption;
- d. crimes of sexual violence;

- e. criminal acts punishable by imprisonment of 5 (five) years or more, except due to negligence;
- f. criminal acts against human life;
- g. criminal acts punishable by a special minimum sentence;
- h. certain criminal acts that are very dangerous or detrimental to society; and/or
- i. crimes except for those who have the status of users or abusers.

The concept of traffic crimes, in Article 1 point 24 of the Traffic and Road Transportation Law, provides a terminological definition of a traffic accident as 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.

The Traffic and Road Transportation Law divides traffic accidents into 3 (three) groups, namely minor traffic accidents, moderate traffic accidents and serious traffic accidents.

- a. A minor traffic accident is when the consequences are damage to vehicles and/or goods.
- b. A moderate traffic accident is when the traffic accident results in minor injuries to the victim and damage to the vehicle and/or goods.
- c. Serious traffic accidents occur when the victim experiences a serious accident or dies.

The Traffic and Road Transportation Law has ambiguity in interpreting the element of fault in traffic accidents. On the one hand, according to the provisions of Article 1 point 24 of the Traffic and Road Transportation Law, it explains that "Traffic Accidents are an unexpected and unintentional event on the Road involving Vehicles and Users resulting in Road or other victims without human and/or property losses." However, based on the provisions of Article 311 of the Traffic and Road Transportation Law, it is stated that traffic accidents occur due to the deliberate actions of motor vehicle drivers which cause different consequences, either in the form of damage to goods or the presence of victims ranging from minor injuries to death.

Regardless of whether the element of guilt was committed intentionally or negligently, the element of guilt in the perpetrator cannot be immediately eliminated through the application of restorative justice.

There are two types of errors recognized in criminal law theory, namely deliberate errors (*dolus/verzet*) and negligent errors (*culpa*). The perpetrator of a traffic accident is categorized as having an element of error in the deliberate category as

aware of the possibility (*dolus eventualis*) or the deliberate category of negligence that is likely to be interpreted (*bewuste as (dolus culpa)*). conscious (*eventualis*) as someone who knows the consequences of an act but still does the act, even though the perpetrator does not want the consequences to appear. ⁶While conscious negligence (*bewuste culpa*) is a neglect of careful efforts or a lack of attention to things that should have been expected ⁷. The perpetrator assumes that the consequences will not occur, and even though they have taken preventive measures, the consequences still occur.⁸

Van Dick explains that both intentional deliberate action (*dolus eventualis*) and conscious negligence (*bewuste culpa*) have several characteristics that are not different. Intentional deliberate action (*dolus eventualis*) and conscious negligence (*bewuste culpa*) both choose to act and do not pay attention to the interests of others. However, the threat between the two is not the same. Intentional deliberate action (*dolus sadar eventualis*) has a heavier criminal sanction ⁹. Understanding the form of error in the form of *dolus eventualis* or conscious negligence (*bewuste culpa*) committed by the perpetrator in a traffic accident is important in determining the steps to handle the perpetrator if the restorative justice method will be applied.

So far, *restorative justice* has only been applied based on the classification of types of traffic accidents, as regulated in Article 229 of the Traffic and Road Transportation Law, namely minor traffic accidents, moderate traffic accidents and serious traffic accidents with the concept of *restorative justice* only seen as an effort to create a *win-win solution* between victims and perpetrators of criminal acts (delicts), where the provision of compensation to victims of traffic accidents is described "as if" only functioning to minimize criminal sanctions.

restorative justice should be broadly interpreted as conveyed by Liebmann, namely: " *Restorative justice aims to restore the well-being of victims, offenders and communities damaged by crime, and to prevent further offending.*" ¹⁰The awareness of the victim who has forgiven the perpetrator, viewed from the criminal law aspect, is not a reason for forgiveness that can eliminate the illegal nature of the act or eliminate criminal sanctions for the perpetrator. Sanctions must be interpreted as an effort to improve the perpetrator as well as protect the community.

If we refer to data showing that the cause of traffic accidents is driver quality, this phenomenon contrasts with restorative justice policies, which appear to be

⁶Eddy OS Hiariej. *Principles of Law* , Cahaya Alam Pustaka., 2014, p. 175

⁷Tongat. *The Basics of Criminal Law in Indonesia from a Reform Perspective* , UMM Press. 2020, p. 289

⁸ *Ibid*

⁹Zainal Abidin Farid, *Criminal Law 1*. Sinar Grafika. Yogyakarta, 2018, p. 198

¹⁰ *Ibid*, p. 25

limited to considerations to mitigate the defendant's sentence. Theoretically, this contradicts the concept of *restorative justice*, which emphasizes balance between the three components: the perpetrator, the victim, and the community.

The impact of *the restorative justice concept* that is not applied properly, *in this* case in traffic accidents, can cause harm to society. Without improving the quality of the perpetrator, it is very possible that the perpetrator's actions (mistakes) will be repeated. Therefore, the application of *the restorative justice concept* should not only provide compensation for victims and cover behavioral improvements for perpetrators to achieve good and correct driving quality, but on the other hand, efforts to improve perpetrators also protect society from future traffic accidents.

Based on the explanation above, a balanced concept is needed when implementing *restorative justice* for perpetrators. This mechanism aims to ensure that *restorative justice mechanisms* are not only viewed as efforts to mitigate sanctions for perpetrators, but also include a concept of rehabilitating the perpetrator, also known as a curative method.

3.2 Weaknesses in Resolving Traffic Accident Cases Through Restorative Justice

Lawrence M. Friedman explains that the effectiveness of law enforcement is influenced by legal structure, legal substance, and legal culture. The weaknesses of terminating prosecution in resolving traffic accidents based on restorative justice are as follows:

a. Weaknesses of the legal structure

1) Lack of Understanding of the Concept of Restorative Justice Among Law Enforcement Officials

The law enforcement process involves various parties, including correctional institutions, non-governmental organizations, and local communities. Lack of communication and cooperation between these agencies can lead to confusion and misunderstanding regarding each party's role in the *restorative justice process*. To address this challenge, law enforcement officials need to build strong networks with various stakeholders to support each other in implementing this policy ¹¹.

2) Lack of Coordination Between Law Enforcement Agencies

¹¹Hayatuddin, Suharyono, Sobandi, Legal Implications of the Constitutional Court Decision on the Application of the *Restorative Justice* Concept in Indonesia. *Journal of Law and Justice* , 11(2). 2022 , p. 42

Lack of coordination between law enforcement agencies is an obstacle to the implementation of *restorative justice*. This leads to normative conflict, uncertainty in implementation, and can even hinder the success of *restorative justice*.

3) Human Resource Readiness

The readiness of institutions involved in *restorative justice*, such as the police, courts, and social welfare agencies, is also crucial. Clear and comprehensive regulatory support is also needed to ensure that *restorative justice* can be implemented effectively and regularly.

Human resource readiness in *restorative justice* is key to the successful implementation of these principles. With trained, competent, and appropriately attuned personnel, the *restorative justice process* can be effective and efficient, resulting in fair resolutions and restored relationships.

b. Weaknesses of legal substance

The LLAJ Law does not regulate the formal law of traffic accident cases, the applicable procedural law follows Law No. 20 of 2025 concerning the Criminal Procedure Code. The conditions for implementing restorative justice in Law No. 20 of 2025 concerning the Criminal Procedure Code can only be applied in traffic accidents that do not result in death.

It is necessary to reformulate new norms regarding Article 80 paragraph (1) letter a of Law No. 20 of 2025 concerning the Criminal Procedure Code and Article 310 paragraph (4) of Law No. 22 of 2009 concerning LLAJ so that they are in line with the ideals of reforming the Criminal Code and Criminal Procedure Code which focus on a more modern, humanistic and just national legal transformation.

c. Weaknesses of legal culture

Indonesian legal culture is considered difficult to forgive when someone suffers a loss. Efforts to reconcile are considered difficult, including reaching a settlement. This is because many people believe that justice can be achieved by punishing those who commit crimes as severely as possible.

A community's legal culture also presents an obstacle if individuals and communities continue to think retributively. This means that the community still believes that justice is achieved when a person in conflict with the law is punished according to their actions, thus providing a deterrent effect for the child. This community's legal culture, which is still considered inexperienced and holds the view that those who commit crimes must be punished, is one of the obstacles that must be overcome in achieving effective restorative justice in law enforcement efforts through peacemaking.

4. Conclusion

The procedure for resolving traffic accident cases through restorative justice is guided by Law Number 20 of 2025 concerning the Criminal Procedure Code, however, in the application of the restorative justice mechanism for traffic accident crimes, it is only applied as an effort to create *win-win solution* between victims and perpetrators, where the provision of compensation to traffic accident victims is depicted as if it only functions to minimize criminal sanctions, without any improvement in the quality of the perpetrator, which makes it very possible for the perpetrator to repeat their actions (mistakes). The weaknesses of the termination of prosecution in resolving traffic accident cases based on restorative justice consist of weaknesses in the legal structure including the lack of understanding of the concept of restorative justice among law enforcement officers, lack of coordination between law enforcement officers, and readiness of human resources. The solution is to improve the professionalism of the prosecutor's office, especially public prosecutors, by providing education and training on the application of restorative justice, so that it can provide understanding for public prosecutors in carrying out their duties and authorities. The weakness of the legal substance is found in the regulation of the requirements for the application of restorative justice in Law No. 20 of 2025 concerning the Criminal Procedure Code which can only be applied in traffic accidents with a maximum criminal sentence of five years. The solution is to reformulate new norms regarding Article 80 paragraph (1) letter a of Law No. 20 of 2025 concerning the Criminal Procedure Code and Article 310 paragraph (4) of Law No. 22 of 2009 concerning LLAJ to be in line with the ideals of reforming the Criminal Code and Criminal Procedure Code which focus on the transformation of national law to be more modern, humanistic and just. The weakness of the retributive legal culture in society. The solution is to provide a comprehensive and holistic understanding in legal education for the community, by involving community participation in understanding various legal products on *Restorative Justice*.

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