

# Criminal Act Settlement of Traffic Accidents Investigation Based on Restorative Justice

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**Abstract.** Contradictions often occur in criminal act of traffic accidents where perpetrators have usually settled their obligations by providing compensation to victims or victims' families, yet they remain subject to criminal sanctions. This condition is often perceived unfair among perpetrators. Hence, a discourse to seek for diversion using restorative justice approach for the perpetrators of road traffic crimes emerged. A normative juridical approach was used in this explanatory research. The results showed that in handling traffic accident cases, the Indonesian National Police (Polri) as investigators can use discretion as stipulated in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police. This discretion allows investigators to refer to the restorative justice mechanism to provide justice for all parties, including the perpetrator, the victim and the community. The new traffic crime law goes in accordance with the principles of justice Restorative also conforms with philosophical objective of law, namely, to determine perpetrators' responsibility according to the qualitative measurement of their actions.

**Keywords:** Traffic Accident; Investigator; Restorative Justice

## 1 Introduction

Traffic is an essential means for a community to expedite their mobility, and indeed, it cannot be separated from transportation. Although transportation is only about the movement of people and goods, since goods and services make the lives of humans, the role of transportation becomes inevitable. Today's development has made transportation significant and diversified, and transportation has functioned as a supporter, impetus, and driving force of regional growth to increase equal distribution.

Meanwhile, a traffic accident is an event that occurs when the system fails to accommodate safety on the street for people and vehicles, or there is a quantitative discrepancy between vehicles and road facilities. The latter includes an issue in the lack of road network expansion. Based on data from the Indonesian National Police (Kepolisian Republik Indonesia—Polri), 107,500 traffic accidents happened in 2019, increasing from 103,672 traffic accidents in 2018. Interestingly, motorized vehicle offenders who cause traffic accidents are often not categorized in the element of deliberation but rather of negligence. The formula “because of his or her fault” is considered negligence or culpa, which according to the Criminal Law is categorized into two types: conscious Culpa and unconscious Culpa.

However, contradiction often occurs in traffic accidents. Although the perpetrator has fulfilled his obligation to compensate the victim or the victim's family, he is still subject to criminal sanctions, which is often unfair. Therefore, a diversion with the restorative justice approaches is often voiced for the traffic accident perpetrators. Restorative justice is a way to

solve criminal cases involving a community, victims, and perpetrators, aiming to create justice for all parties. Hopefully, it recovers the situation and prevents such crimes from reoccurring. The purpose of restorative justice, in other words, is to achieve rapport between the perpetrator and the victim.

Regarding criminal law enforcement, restorative justice is an approach to solve criminal problems involving victims, offenders, and community's figures for the sake of creating justice. The terminology used to describe the concept of restorative justice is various, ranging from communitarian justice, positive justice, relational justice, reparative justice and community justice. The substance of restorative justice contains principles of building joint participation among involved parties in resolving an event or criminal act and placing them as stakeholders who collaborate to seek an immediate fair solution (win-win solution).

In other countries, such as the UK and the Netherlands, attention to victims of crime in the form of compensation is long-lasting. Compensation can be provided by the representative of the perpetrator, which is known as vicarious liability. British Criminal Law recognizes vicarious liability under the law where a person is responsible for an act committed by another person. Vicarious liability is briefly referred to as substitute liability.

## **2 Research Methods**

The approach used in this study is a normative-empirical juridical approach, which seeks to identify the laws that exist in society and examine their adjacent symptoms in a legal matter. This study was conducted in an explanatory manner that verified and falsified the theories, such as the theory of justice, the theory of benefit, and restorative justice.

## **3 Results and Discussion**

The Criminal Procedure Code (KUHAP) concerning the duties and powers of the police posits that the state police is the sole official who has the monopoly on investigating general crimes. One of the powers that the police have as investigators are discretion. Discretion allows the police to decide an action not based on statutory provisions or applicable law but wisdom, consideration, or justice. Discretion is also defined as the freedom to make decisions in every situation faced according to one's own opinion.

The discretion of an investigator is regulated in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police. Discretion is a police's authority that originates from the general obligation principle. It is bestowed upon the police to exercise their authority to act or not according to their judgment for maintaining public order and security. Discretionary is adjacent to the police's function in executing their duties because this function is the basis for their very existence as law enforcement. A crime committed by a person in a growing society requires special and subjective action by the investigators for the sake of public interest, including traffic accidents crime.

Regarding traffic crimes, investigators are granted full authority based on the provisions in Article 7's paragraph (1) section j of the Criminal Procedure Code concerning their obligations or duties to accomplish specific actions on their merit. Furthermore, Article 18's paragraph (1) and paragraph (2) of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia provides a formulation of the concept of discretion which serves as a

guideline for investigators in their implementation of discretion when investigating traffic accidents.

Restorative justice is a model approach that emerged in the 1960s for resolving various criminal cases. Unlike the conventional approaches within the criminal justice systems, the restorative justice approach focuses on the direct participation of perpetrators, victims, and the community in the settlement process of a criminal case.

To create legal certainty in law enforcement on traffic crimes, the substance of Law Number 22 of 2009 needs amendment. The changes are expected to contribute to law enforcement in dealing with traffic crimes using restorative justice. It aims to create a legal substance and enforce the law concerning traffic crimes by following philosophical and legal objectives: establishing justice and legal certainty for the law's benefits.

Substantive changes that can be made to realize a positive contribution to traffic crime through restorative justice will be focused on the criminal provisions contained in Law Number 22 of 2009. Amendments to the criminal provisions in question can apply restorative justice in traffic crime law enforcement beneficial for society. The new traffic criminal law policy under the principles of restorative justice and philosophical and legal objectives must pay attention to:

- a. the burden of accountability to the perpetrator under the qualitative value of the actions taken. it should also consider the philosophical goals of justice by considering whether there are any intentional and negligent aspects of each involved in traffic accidents
- b. the philosophical objectives of legal benefit. it also should consider that impact for victims and their families, on perpetrators and their families, and for the public, including guiding traffic crime perpetrators in terms of compensation and rehabilitation for victims and families involved in traffic accidents
- c. the philosophical goal of legal certainty by considering awareness, acknowledgement, apology and joint statement between the perpetrator and the victim to establish goodwill and rapport and prevent reoccurrence.

## 4 Conclusion

The National Police of the Republic of Indonesia, as the investigators of criminal cases of traffic accidents in Indonesia, can use their discretion based on the provisions in Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Based on this discretion, investigators can seek a restorative justice mechanism in traffic accident crimes to guarantee maximum benefit and justice for all involved parties that often include the perpetrator, the victim, and the community. The new policy concerning traffic crime law that matches the principle of restorative justice is expected to meet the philosophical objective of law that holds accountability and consideration in mind based on the qualitative value of the actions taken.

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