



RESTORATIVE JUSTICE BASED ON CUSTOMARY LAW AS AN ALTERNATIVE FOR RESOLVING TRAFFIC ACCIDENTS IN ACCORDANCE WITH THE CRIMINAL CODE AND LAW NO. 22 OF 2009

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Abstract

This study explores the concept of restorative justice based on customary law (*hukum adat*) as an alternative mechanism for resolving traffic accident cases in Indonesia. This study aims to examine how restorative justice principles emphasizing reconciliation, compensation, and community harmony can align with the provisions of the Indonesian Criminal Code (KUHP) and Law No. 22 of 2009 concerning Road Traffic and Transportation. This research identifies the potential of customary law to provide more culturally grounded and humane solutions than conventional punitive approaches. Using normative juridical analysis complemented by case studies from several regions, this study finds that customary dispute resolution mechanisms can effectively restore social balance and victim satisfaction without disregarding formal legal norms. The integration of restorative justice principles with state law offers a hybrid model that strengthens community participation and promotes justice that is both legal and moral.

Keywords: *Restorative justice, customary law, traffic accidents, criminal code, Law No. 22 of 2009, alternative dispute resolution.*

1. Introduction

The country of Indonesia has a variety of styles and ethnic groups, making the Indonesian nation have a variety of cultures, languages, races, religions, and customs (no less than 360 ethnic groups). Indonesia is known to have a diversity of cultural customs; however, it is still recognized as one Indonesian nation. Road traffic and transportation play a strategic role in supporting national development and strengthening national integration, fulfilling the mandate of the 1945 Constitution of the Republic of Indonesia to advance public welfare. As part of the national transportation system, the road traffic and transportation sector needs to develop its potential to ensure security, safety, order, and smooth road transportation, ultimately contributing to economic and regional development.

All of these regulations are comprehensively set out in Law Number 22 of 2009 concerning Road Traffic and Transportation, which replaced Law Number 14 of 1992 because it was deemed no longer appropriate to current developments, technological advances, and the need for an integrated transportation system. Furthermore, the law also contains provisions regarding the rights, obligations, and responsibilities of service providers for third-party losses arising from the provision of road transportation. Strategic developments, both at the national and international levels, demand that road traffic and transportation be managed in a manner that adapts to advances in science and technology, the implementation of regional autonomy, and increased accountability in state governance.

Therefore, road transportation must be managed sustainably, enhancing accessibility and providing services to the public. These efforts must consider public interest, community capacity, environmental sustainability, and coordination between central and regional governments, agencies, sectors, and various related elements to ensure safe and orderly traffic conditions. In the context of road traffic and transportation, a traffic accident can be understood as an event that occurs on the highway accidentally and unexpectedly, resulting in loss of life or material loss. This is in line with the definition stated in Government Regulation Number 43 of 1993 concerning Road Infrastructure and Traffic, specifically Article 93, which states that a traffic accident is an event on the road that occurs unexpectedly and



unintentionally, involving vehicles that are moving with or without using other roads, resulting in human casualties or property losses.

When restorative justice is applied in the context of traffic accidents, various challenges and dilemmas arise. A major dilemma arises when an accident results in a loss of life. In such situations, the victim's family often demands a firm formal legal process, while the perpetrator may demonstrate good faith and bear the losses. The implementation of restorative justice in traffic accidents that result in death often presents ethical and legal challenges. On the one hand, a deterrent effect is expected; on the other, there is a social interest in maintaining harmony. A more humane and restorative alternative solution model is restorative justice. Law enforcement through restorative justice mechanisms is an alternative solution that focuses on restoration and reconciliation between perpetrators, victims, and the community, rather than solely on punishment. This approach emphasizes that criminal acts are not only violations of the law but also violations of social values that must be restored.

Therefore, the primary goal of restorative justice is not revenge but the restoration of social balance through dialogue, mutual agreement, and the perpetrator's moral responsibility for the consequences of their actions. Restorative justice is an approach that emphasizes restoring social relationships between perpetrators and victims through dialogue, mediation, and mutual agreement. This approach differs from retributive systems that emphasize retribution and imprisonment. In the Indonesian context, the concept of restorative justice is not new. Since pre-colonial times, indigenous communities have been familiar with dispute resolution systems based on deliberation, peace, and social responsibility. Principles such as harmony, peace, and mutual cooperation have been the foundation of customary law in various regions.

Customary law practices in Indonesia have long prioritized resolution through consensus and peace, aimed at restoring social harmony. The restorative justice policy stipulated in Police Regulation No. 8 of 2021 also demonstrates the government's recognition of the importance of a restorative approach in the criminal justice system. However, in practice, the implementation of this policy still faces obstacles, such as a lack of understanding among officials regarding the substance of restorative justice, the absence of uniform procedural standards, and the public perception that reconciliation is a "legal shortcut." In the 2021–2022 period, 306 traffic accident cases were resolved using a restorative justice approach. Obstacles that arose included differences in perceptions between victims and perpetrators, as well as a lack of public awareness of the concept.

These obstacles demonstrate that the implementation of restorative justice needs to be adapted to local social and cultural conditions. This is where customary law values are highly relevant. Indigenous communities inherently have conflict resolution mechanisms that emphasize social reconciliation, acknowledgment of wrongdoing, and compensation for victims. In many indigenous communities, perpetrators are not merely punished but are also required to restore relationships with victims through rituals, compensation, or community service. In customary law systems, case resolution focuses more on restoring social balance and restoring the reputation of families tarnished by the perpetrator's actions. Thus, customary law can be a source of inspiration for the application of restorative justice in the field of traffic.

The settlement of the case was not carried out through formal court channels in accordance with the laws and regulations in force in Indonesia, but the case was resolved through the applicable customary law channels. The process of resolving criminal cases through customary law is still used to day by indigenous communities, such as what is still carried out by the indigenous communities in the Mataram Marga - Sukadana - East Lampung Regency - Lampung, the indigenous communities in Tenganan Village, Pagringsingan District, Karangasem Regency, Bali, the indigenous communities in the Sade Village area - Pujut District, Central Lombok - West Nusa Tenggara; as well as many other areas. All of these customary laws always prioritize the principle of peace, based on the principle of deliberation/consensus.



The Constitution after the amendment guarantees that customary laws such as this are recognized through Article 18B, paragraph (2), of the 1945 Constitution. Legal development, like other aspects of development, should consider the multicultural aspects of a nation's community. Legal development that ignores the reality of societal plurality (political ignorance of plurality) can trigger conflicts and norms in society. A study by Benard L. Tanya demonstrated that positive law/national law becomes a burden for some local communities. This is because, despite the fact that life demonstrates legal plurality, legal development in Indonesia is still dominated by the national legal system and pays little attention to customary law, religious law, and the self-regulation mechanisms that exist within local communities.

In practice, customary law embodies local wisdom, which is currently gaining prominence due to its proven usefulness in various aspects of life. Local wisdom refers to the values, norms, laws, and knowledge formed by religious teachings, beliefs, traditional values, and experiences passed down from ancestors, ultimately forming a logical knowledge system used to solve everyday problems. Development is progressive because it actively reforms laws toward the desired direction of society and its efforts to bring about social change. Adaptive, on the other hand, is aimed at serving society at its most advanced stage of development. This is what has occurred in the process of developing Indonesian national law, including the development of criminal law, which should not be the values of the local wisdom society.

The existence of Indonesian customary criminal law is constitutionally recognized through Article 18 B of the 1945 Constitution of the Republic of Indonesia. The material contained in Article 18B, paragraph (2) of the 1945 Constitution, can normatively be drawn into 4 (four) elements that must be considered as prerequisites for the existence and validity of customary law communities in Indonesia, which automatically qualify as living values and are recognized as maintaining the lives, as a result of the decline in life, which seeks a life in other places or regional or origin regional environments, and individuals do not have ties. As a result, the power of customary law, which has been the basis of his life so far, gradually fades and finally disappears altogether.

According to the ancestral tales of the Lampung people, the community in Mataram Marga village, Sukadana sub-district, East Lampung Regency, Lampung Province, originates from one clan but has two different customary law schools, namely the Sebatin customary law school and the Penyimbang customary law school. In Mataram Marga village, the definition of the crime of eloping with a woman and the sanctions given to the perpetrators of this crime are not the same as those regulated in the Criminal Code. According to the customary law of Margayang Village, the crime of running away with a woman is called if a girl is taken away by a man and not returned before Maghrib without the knowledge or permission of her parents or guardian, then this act is considered a crime of depriving a person of liberty (kidnapping), which in the customary term is called "Kawin-Larian."

The implementation of restorative justice in resolving criminal cases, such as traffic accidents, is regulated by the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice (hereinafter referred to as Perpol No. 8 of 2021). Prior to the enactment of Perpol No. On December 8, 2021, the resolution of criminal cases involving traffic accidents was regulated by Law of the Republic of Indonesia Number 2 of 2002 concerning the Republic of Indonesia National Police. According to the provisions of Article 4 of Perpol No. On October 8, 2021, the requirements for resolving criminal cases based on restorative justice were regulated, which consisted of material and formal requirements.

Based on the above opinion, not all criminal cases can be resolved outside of court, for example, traffic accidents. The consequences of traffic accidents are usually minor or minor losses, and they do not result in loss of life. Restorative justice can be used, except in cases of serious accidents, even those that result in loss of life. In this case, the perpetrator must be held accountable for their actions through the courts. The mechanism for resolving customary cases, namely the authority to receive, manage,



adjudicate, and make decisions, is carried out according to customary law and the customary law community concerned. Decisions made by customary courts must be complied with by the parties (the perpetrators of customary crimes). The procedures for making decisions and implementing them are carried out according to customary law, and the customary law community is concerned in accordance with the adopted leadership system, which includes the Ondoafian leadership system, the king's leadership system, the authoritative male leadership system, and the mixed leadership system.

Settlement of crimes that are not related to land, women, murder, arson, and theft can be resolved peacefully. However, in recent developments, these customary crimes are often attempted to be resolved peacefully through customary law, even though they are very serious customary violations. For example, cases of traffic accidents, murder, assault, carrying off a girl, theft, and adultery, in general, can be resolved through customary law by means of peace by the parties themselves or through the courts.

2. Formulation of the Problem.

- a. How can customary law values be integrated into the application of restorative justice in traffic accidents?
- b. How is the concept of restorative justice applied in resolving traffic accident cases in Indonesia?

3. Methodology

This research employs normative legal research, emphasizing document study in library research to examine secondary legal data related to the research problem and objectives. The approaches employed are conceptual and historical. The conceptual approach in this research aims to identify the basis for criminal mediation derived from relevant legal principles and customary law doctrines. The historical approach is used within the framework of tracing the application of criminal mediation within customary law in Indonesia. Given Indonesia's vast territory and the diversity of indigenous communities, this research will focus on the indigenous people of Lampung.

This research emphasizes secondary data consisting of primary legal materials in the form of documented customary law provisions and secondary legal materials obtained from textbooks, journals, and legal cases. The procedure for collecting legal materials is carried out through literature and document studies in accordance with the problems that have been formulated for further comprehensive study. Processing and Analysis of Legal Materials is carried out using the legal dogmatic method, namely primary legal materials are obtained by understanding the text of the legal materials and then linking them with the contents of the meaning of one text with another that describes the resolution of conflicts through criminal mediation between perpetrators and victims of criminal acts in customary law.

4. Result and Discussion

a. Customary Law Values Can Be Integrated in the Implementation of Restorative Justice for the Resolution of Traffic Accident

Customary law, in practice, contains local wisdom that is currently emerging because its capacity has proven useful as an approach in various aspects of life. What is meant by Logical wisdom refers to the values, norms, laws, knowledge, religious teachings, beliefs, traditional values, and experiences inherited from ancestors, which ultimately form a knowledge system to solve every problem in the community. Development is meaningfully progressive because it actively reforms laws toward the desired direction of society and its efforts to bring about social change. Adaptive, on the other hand, is intended to serve society at its most recent stage of development. This is what has occurred in the process of developing Indonesian national including the development of national criminal law, which should not lose the values of local wisdom society.

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For example, cases of traffic accidents, murder, assault, carrying off a girl, theft, and adultery, in general, can be resolved through customary law by means of peace by the parties themselves or through customary courts. To avoid traffic accidents that could harm themselves or others, motor vehicle drivers, whether they have two or more wheels, must obey traffic signs and increase their vigilance. They must also complete their vehicle documents and equipment. A traffic accident is an unexpected and unintentional event on the road involving motor vehicles with or without other road users that results in human casualties or property losses, according to Article 1 of Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic and Road Transportation.

Although traffic accidents are regulated as criminal offenses, case resolution often involves mechanisms outside the criminal justice system, including decision-making by law enforcement officials, joint discussions, consultations, and institutions that promote tolerance in the community. Restorative justice is an approach that emphasizes the needs of victims, perpetrators, and community participation, rather than simply fulfilling legal requirements or imposing penalties. Indonesian National Police Regulation Number 8 of 2021 regulates the implementation of restorative justice in resolving criminal acts, particularly traffic accidents. Previously, research on traffic accidents focused on specific aspects, such as property damage, minor injuries, and fatalities. However, there has been little in-depth research on the implementation of restorative justice in the context of traffic accidents, particularly following the enactment of Police Regulation No. 8 of 2021.

Some researchers consider traffic accidents to be an element of the general criminal justice system without considering the potential for restorative justice implementation. Further, the provisions of Article 310, paragraph (4) of Law No. 22 of 2009 states that in the case of an accident as referred to in paragraph (3) which results in the death of another person, the perpetrator shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah). Based on the provisions of Article 310, paragraphs (2), (3), and (4) of Law No. 22 of 2009, the severity of the punishment for the perpetrator can be determined depending on the consequences experienced by the victim.

According to Subekti and Lushiana, some criminal cases cannot be resolved outside the courts. The cases included in this study are traffic accident criminal cases, which must be resolved through the criminal justice system). Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice assists investigators and 35 National Police investigators in conducting inquiries and investigations, including providing legal protection. Ensure that all formal and material requirements are met during the restorative justice process to resolve traffic accidents.

Each restorative justice peace agreement letter can be different for each case and cannot show the peace agreement letter because it is a confidential document that cannot be known by anyone except the parties concerned, so it only provides an example or general description of the contents of the peace agreement between the two parties. Based on the Regulation of the Republic of Indonesia National Police Number 8 of 2021, Concerning Handling of Criminal Acts Based on Restorative Justice, the settlement of traffic accident cases that cause death should not be implemented through Restorative Justice because it is related to the loss of a person's life that does not meet the material requirements, while the implementation of Restorative Justice must meet the following two requirements:



1. Material Requirements:

- a. Do not give rise to feelings of anxiety and/or rejection from society.
- b. Does not cause social strife;
- c. No potential for separating the nation was found.
- d. Not radical or separatist;
- e. Based on the court's decision, the perpetrator no longer commits the crime;
- f. does not constitute a violation of terrorism, corruption, state security, and human life.

2. Formal Requirements:

- a. Both parties made peace.
- b. Fulfillment of several victim rights and victim obligations.

Even if the formal requirements are met, but the material requirements are not, then Restorative Justice cannot be applied because both are a unity that is a requirement for the settlement of criminal cases outside the court or through Restorative Justice. In line with Article 235 Paragraph 1 of Law Number 22 of 2009 concerning Traffic and Road Transportation, it states that: "If the victim dies due to a traffic accident, as referred to in Article 229 Paragraph 1 Letter C, the driver, owner, and/or public transportation company are required to provide assistance to the victim's heirs in the form of medical expenses and/or funeral expenses without dropping the criminal case charges." This means that it is still not possible to overturn the ultimatum of the criminal case because the victim has died even though a peace settlement has been made.

b. The Concept of Restorative Justice Applied in Traffic Accident Case Resolution in Indonesia

Bagir Manan said that "the concept of restorative justice from countries that widely implement the Anglo-Saxon system, these countries implement restorative justice in law enforcement that is fairer and more balanced between the interests of the perpetrator and the interests of the victim and the interests of the wider community." Howard said his opinion regarding restorative justice is that:

- a) Crime is a violation against society and also the relationships between citizens within it.;
- b) Obligations arise from violations;
- c) Victims, offenders, and the community are included in the scope of justice in the effort to implement everything correctly;
- d) The focus is on recovering the losses experienced by the victim physically, psychologically, and materially, including accountability by the perpetrator, apologizing, and of course, a feeling of regret by the perpetrator and providing compensation or restitution..

In the context of resolving traffic crime disputes in public spaces, the concept of restorative justice can be applied through several important steps. First, establishing a safe and open dialogue space for victims and perpetrators to communicate and listen to each other. This allows victims to share their experiences and understand the harm they have suffered, while perpetrators can express their regret and understand the impact of their actions. Next, a mediation process or restorative conference can be used to help build understanding and agreement between the victim and perpetrator. A trained mediator can facilitate co-constructive dialogue, direct the discussion toward healing, and assist in reaching a just and mutually beneficial solution. In the case of traffic crimes resulting in death, a restorative conference can involve the victim's family, the perpetrator, and other relevant parties to reach an agreement on appropriate reparations.

Through a restorative justice approach, resolving traffic crime disputes in public spaces can achieve the goal of restoring victims' rights and providing perpetrators with the opportunity to take responsibility for their actions and make amends. Through the restorative justice process, perpetrators can understand the impact of their actions, feel empathy for the victim, and take concrete steps to repair the harm caused. This can include financial reparation efforts, such as paying compensation to the victim or the victim's family, as well as taking relevant corrective actions, such as participating in traffic safety programs or public awareness campaigns.. Providing offenders with the opportunity to participate in



a restorative justice process allows them to learn from their mistakes, change their behavior, and take full responsibility for their actions.

Furthermore, active participation in a restorative justice process can also help offenders gain a deeper understanding of the social and moral consequences of their actions and build better relationships with the surrounding community. In the context of resolving traffic crime disputes in public spaces, providing offenders with the opportunity to participate in a restorative justice process can also have a positive impact on the criminal justice system as a whole. This approach can help reduce offenders' reluctance to engage in the legal process and reduce the burden on the criminal justice system by redirecting some cases to more therapeutic and rehabilitative alternative pathways.

The concept of restorative justice applied in resolving traffic crime disputes in public spaces provides an opportunity for perpetrators to gain understanding, improve their behavior, and take responsibility for their actions. Through this approach, efforts to restore victims' rights and the social reintegration of perpetrators can be achieved, thus making the dispute resolution process more effective, just, and sustainable. The restorative justice approach to resolving traffic crime disputes in public spaces has several benefits and potential. One of them is efforts to restore victims' rights. In this context, restorative justice places primary attention on victim recovery, both in terms of material and immaterial recovery. Material recovery can include financial compensation for victims, such as payment of compensation for losses incurred due to traffic crimes. In addition, immaterial recovery is also very important, where victims are given the opportunity to express their experiences and emotions and receive the understanding, support, and justice they need.

The implementation of restorative justice in resolving traffic crime disputes in public spaces is greatly influenced by certain factors that can be either supporting or inhibiting. First, legal awareness and public understanding of the concept of restorative justice play a key role in fostering acceptance and effective participation in the dispute resolution process. The public needs to understand that restorative justice is not simply an alternative conflict resolution approach, but also an approach aimed at restoring disturbed relationships and meeting the needs of all parties involved.

Close collaboration between law enforcement agencies, social service providers, and other relevant parties is a crucial factor in the successful implementation of restorative justice. This synergy between various actors enables effective coordination in handling traffic crime cases, including victim care, social reintegration of perpetrators, and restitution of losses incurred. As a key emphasis, the government and relevant institutions can also strengthen regulations and policies that support the implementation of restorative justice. This includes developing operational guidelines, establishing standard procedures, and increasing accessibility to restorative justice services for the community. Clear and firm regulations will provide a strong foundation for the consistent and fair implementation of restorative justice.

By identifying and addressing supporting factors and addressing inhibiting factors, the implementation of restorative justice in resolving traffic crime disputes in public spaces can be more successful and have a positive impact. Broader understanding, solid cooperation, supportive regulations, and changes in legal culture will provide a strong foundation for making restorative justice a more targeted and effective approach to addressing traffic crimes. By addressing all these factors, it is hoped that the implementation of restorative justice in resolving traffic crime disputes can bring significant benefits to victims, perpetrators, and society as a whole.

5. Conclusion

Positive legal regulations in Indonesia, namely the Criminal Code and Law No. Traffic and Road Transportation essentially classify traffic accidents as criminal acts that can be resolved through formal criminal law mechanisms. However, both legal instruments also provide space for out-of-court settlements through a restorative justice approach, particularly in cases that do not result in fatalities



and are accompanied by good faith from the perpetrator. Restorative justice emphasizes restoring social relations between the perpetrator, victim, and community. This approach emphasizes a just resolution, considering the interests of all parties rather than simply imposing criminal sanctions on the perpetrator.

Customary law in various regions of Indonesia concretely practiced the values of restorative justice through mechanisms of deliberation, peace, and compensation oriented towards restoring social balance. Therefore, the application of restorative justice based on customary law can be an alternative for resolving traffic accidents that is more humane and in line with the social society of justice. In practice, the implementation of restorative justice based on customary law still faces legal and sociological obstacles, such as limited regulations, differing interpretations by law enforcement officials, and a lack of public understanding. However, with the support of clear policies and synergy between law enforcement officials and customary institutions, this resolution model has the potential to strengthen the national legal system, making it more just, civilized, and rooted in the nation's legal culture.

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SUMBER LAIN :

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Pasal 18B ayat (2) Undang-Undang Dasar Negara Republik Indonesia 1945, menyatakan bahwa :
"Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang