

## **TERMINATION OF ACCURATE INVESTIGATIONS AND RESTORATIVE JUSTICE**

Suisno, Enik Isnaini, Ahmad Royani

[suisno72@unisla.ac.id](mailto:suisno72@unisla.ac.id), [enikisnaini@unisla.ac.id](mailto:enikisnaini@unisla.ac.id), [royanilaw@unisla.ac.id](mailto:royanilaw@unisla.ac.id)

Faculty of Law, Lamongan Islamic University

### **Abstraction**

Restorative Justice accommodates the interests of the parties, including the victim, because the victim in this case is involved in determining the sanctions for the perpetrator. Restorative Justice returns conflict to the most affected parties (victims, perpetrators and “their community”) and gives priority to their interests. Restorative justice seeks to restore the victim's safety, personal respect, dignity, and more importantly a sense of control. By adhering to the paradigm of restorative justice, it is hoped that the loss and suffering suffered by the victim and his family can be recovered and the guilt burden of the perpetrator of the crime can be reduced because he has received forgiveness from the victim or his family.

**Keyword : Restorative Justice, case, involved**

### **Introduction**

Traffic problems are a problem faced by developed countries as well as developing countries such as Indonesia. However, in Indonesia, the problems that are often encountered nowadays are more severe and bigger than in previous years, including accidents, traffic jams and air pollution as well as traffic violations.<sup>1</sup>

Traffic crimes are acts committed by one or more persons who violate the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation so that the perpetrators are sanctioned with corporal punishment

---

<sup>1</sup>Arif Budiarto and Mahmudal, Traffic Engineering, UNS Press, Solo, 2007, p. 3



and/or fines in accordance with the applicable laws and regulations. Accident is a form of traffic crime. Accidents occur due to perpetrators, whether intentional or due to negligence resulting in material losses, injuries, and/or fatalities in the world of traffic and road transportation. Accidents in Law Number 22 of 2009 concerning Road Traffic and Transportation refer more to something that happens accidentally or culpa. The meaning of the meaning of culpa is "error in general", but in legal science it has a technical meaning,<sup>2</sup>

The Indonesian National Police (Polri) is a state instrument that plays a role in maintaining public order and security, law enforcement, protection, protection, and service to the community in the context of maintaining domestic security. Therefore, the National Police are required to continue to develop to be more professional and closer to the community. In other words, the Police are required to develop themselves into civilian police. As a civilian police officer, the position of the National Police in state organizations has a dominant influence in the implementation of the police in a proportional and professional manner which is a prerequisite for supporting the realization of good governance.<sup>3</sup>

Regarding the judicial system in Indonesia, it is still not in line with people's expectations. Many criticisms have been made and often lead to

---

<sup>2</sup>Wirjono Projodikoro, Principles of Criminal Law in Indonesia, Jakarta: Eresco. 2003. Pg 122

<sup>3</sup>Sadjijono, Police Law Series, Police and Good Governance, Laksbang Mediatama, Surabaya, 2008, Pg. 22



decisions by justice seekers against the justice system in Indonesia. This is understandable because the community wants the judiciary to provide justice to the community.<sup>4</sup>

In Indonesian criminal law, the settlement of cases is usually carried out by the application of retributive justice. This retributive justice approach that needs to be reformed is an alternative solution to criminal problems with an emphasis on restoring problems/conflicts and taking balance in society, namely restorative justice.<sup>5</sup>

Ideally, the purpose of the law will be directed at the same time on justice, expediency and legal certainty. In reality, usually there is tension between justice and legal certainty, between justice there is tension and benefit.<sup>6</sup>

The term restorative justice is a foreign term that has only been known in Indonesia since the 1960s era with the term Restorative Justice. In some developed countries, restorative justice is not just a discourse by academics of criminal law and criminology. North America, Australia and several countries in Europe restorative justice has been applied in the conventional criminal

---

<sup>4</sup>Muhammad Rusli, Portrait of the Indonesian Court of Justice, Jakarta: Rajawali Pers, 2006, P.180

<sup>5</sup>Ali Sodikin, Restorative Justice in the Crime of Murder: Perspectives on Indonesian Criminal Law and Islamic Criminal Law, in Asy-Syari'ah, 49, Edition I June 2015, p. 64

<sup>6</sup>M. Hatta Ali, Fast Simple Judiciary & Low Cost, Bandung: IKAPI Member, 2012, Pg. 29



justice process, starting from the investigation, prosecution, adjudication and execution stages.<sup>7</sup>

Restorative Justice accommodates the interests of the parties, including the victim, because the victim in this case is involved in determining the sanctions for the perpetrator. Restorative Justice returns conflict to the most affected parties (victims, perpetrators and “their community”) and gives priority to their interests. Restorative justice seeks to restore the victim's safety, personal respect, dignity, and more importantly a sense of control. By adhering to the paradigm of restorative justice, it is hoped that the loss and suffering suffered by the victim and his family can be recovered and the guilt burden of the perpetrator of the crime can be reduced because he has received forgiveness from the victim or his family.<sup>8</sup>

Regarding the judicial system in Indonesia, it is still not in line with people's expectations. Many criticisms have been made and often lead to decisions by justice seekers against the justice system in Indonesia. This is understandable because the community wants the judiciary to provide justice to the community.

When solving traffic accident cases, every member of the police has an attachment to norms or rules to carry out their obligations as law enforcers. Like *das sollen* which is a normative reality (what should be), namely a

---

<sup>7</sup>Eriyantouw Wahid, 2009, *Restorative Justice and Conventional Justice in Criminal Law*, Trisakti University, Jakarta, Pg. 1

<sup>8</sup>Bambang Waluyo, *Law Enforcement in Indonesia*, Jakarta, Sinar Graphic, 2016, Pg. 108



necessity that must be carried out, not stating something that has actually happened, but what should or should happen.<sup>9</sup>

Thus, every member of the police agency is obliged to state that what is right is right and what is wrong is wrong, without distorting the facts as an interest and without seeing the end of what arises from each of his obligations as law enforcement officers and law enforcers. However, a police officer is also a human being, who sometimes does not only use logic in carrying out his duties to achieve the goal of law enforcement but also uses his conscience. Das sein is a behavioral reality when the impulse of conscience is born.<sup>10</sup>

It can be said that the police are other than law enforcement officers who are part of the community, so that in solving a problem which according to him can be resolved in a way that is chosen and in accordance with the respective parties involved but still does not go out of the way of the laws and regulations that have been ratified. .<sup>11</sup>

Seeing what has been explained, a question arises how the settlement of traffic accidents can be resolved through a restorative justice approach, whereas Law Number 22 of 2009 concerning Road Traffic and Transportation does not regulate the concept of restorative justice. Without a clear procedure or rule in Law No. 22 of 2009 concerning Road Traffic and Transportation, the

---

Pg. 16 <sup>9</sup>Sudikno Mertokusumo, *Knowing the Law is an Introduction*, Yogyakarta: Liberty. 1999.

<sup>10</sup>Sadjiono, *Legal Professional Ethics*, Surabaya: Laksbang Mediatama. 2008. Pg. 59

<sup>11</sup>Ibid



resolution of traffic accidents through this restorative justice approach will create a polemic for law enforcers in carrying out their duties and authorities. Of course, the resolution of traffic accidents through a restorative justice approach will reap various positive and negative impacts on law enforcement officers and the Indonesian people.<sup>12</sup>”

### **Restorative Justice in Termination of Investigation**

The Indonesian National Police (Polri) is a state instrument that plays a role in maintaining public order and security, law enforcement, protection, protection, and service to the community in the context of maintaining domestic security. Therefore, the National Police are required to continue to develop to be more professional and closer to the community. In other words, the Police are required to develop themselves into civilian police. As a civilian police officer, the position of the National Police in state organizations has a dominant influence in the implementation of the police in a proportional and professional manner which is a prerequisite for supporting the realization of good governance.<sup>13</sup>

Regarding the judicial system in Indonesia, it is still not in line with people's expectations. Many criticisms have been made and often lead to decisions by justice seekers against the justice system in Indonesia. This is

---

<sup>12</sup>Ibid

<sup>13</sup>Sadjijono, Police Law Series, Police and Good Governance, Laksbang Mediatama, Surabaya, 2008, Pg. 22



understandable because the community wants the judiciary to provide justice to the community.<sup>14</sup>

In Indonesian criminal law, the settlement of cases is usually carried out by the application of retributive justice. This retributive justice approach that needs to be reformed is an alternative solution to criminal problems with an emphasis on restoring problems/conflicts and taking balance in society, namely restorative justice.<sup>15</sup>

Ideally, the purpose of the law will be directed at the same time on justice, expediency and legal certainty. In reality, usually there is tension between justice and legal certainty, between justice there is tension and benefit.<sup>16</sup>

The term restorative justice is a foreign term that has only been known in Indonesia since the 1960s era with the term Restorative Justice. In some developed countries, restorative justice is not just a discourse by academics of criminal law and criminology. North America, Australia and several countries in Europe restorative justice has been applied in the conventional criminal

---

<sup>14</sup>Muhammad Rusli, Portrait of the Indonesian Court of Justice, Jakarta: Rajawali Pers, 2006, P.180

<sup>15</sup>Ali Sodikin, Restorative Justice in the Crime of Murder: Perspectives on Indonesian Criminal Law and Islamic Criminal Law, in Asy-Syari'ah, 49, Edition I June 2015, p. 64

<sup>16</sup>M. Hatta Ali, Fast Simple Judiciary & Low Cost, Bandung: IKAPI Member, 2012, Pg. 29



justice process, starting from the investigation, prosecution, adjudication and execution stages.<sup>17</sup>

Restorative Justice accommodates the interests of the parties, including the victim, because the victim in this case is involved in determining the sanctions for the perpetrator. Restorative Justice returns conflict to the most affected parties (victims, perpetrators and “their community”) and gives priority to their interests. Restorative justice seeks to restore the victim's safety, personal respect, dignity, and more importantly a sense of control. By adhering to the paradigm of restorative justice, it is hoped that the loss and suffering suffered by the victim and his family can be recovered and the guilt burden of the perpetrator of the crime can be reduced because he has received forgiveness from the victim or his family.<sup>18</sup>

Regarding the judicial system in Indonesia, it is still not in line with people's expectations. Many criticisms have been made and often lead to decisions by justice seekers against the justice system in Indonesia. This is understandable because the community wants the judiciary to provide justice to the community.

When solving traffic accident cases, every member of the police has an attachment to norms or rules to carry out their obligations as law enforcers.

---

<sup>17</sup>Eriyantouw Wahid, 2009, Restorative Justice and Conventional Justice in Criminal Law, Trisakti University, Jakarta, Pg. 1

<sup>18</sup>Bambang Waluyo, Law Enforcement in Indonesia, Jakarta, Sinar Graphic, 2016, Pg. 108





Like *das sollen* which is a normative reality (what should be), namely a necessity that must be carried out, not stating something that has actually happened, but what should or should happen.<sup>19</sup>

Thus, every member of the police agency is obliged to state that what is right is right and what is wrong is wrong, without distorting the facts as an interest and without seeing the end of what arises from each of his obligations as law enforcement officers and law enforcers. However, a police officer is also a human being, who sometimes does not only use logic in carrying out his duties to achieve the goal of law enforcement but also uses his conscience. *Das sein* is a behavioral reality when the impulse of conscience is born.<sup>20</sup>

It can be said that the police are other than law enforcement officers who are part of the community, so that in solving a problem which according to him can be resolved in a way that is chosen and in accordance with the respective parties involved but still does not go out of the way of the laws and regulations that have been ratified. .<sup>21</sup>

Of course, the resolution of traffic accidents through a restorative justice approach will reap various positive and negative impacts on law enforcement officers and the Indonesian people. So it is necessary to conduct a study on the impact of the implementation of restorative justice in this case to find the various possible impacts of this type of approach to the settlement of criminal acts.<sup>22</sup>

---

<sup>19</sup>Sudikno Mertokusumo, *Knowing the Law is an Introduction*, Yogyakarta: Liberty. 1999. Pg. 16

<sup>20</sup>Sadjiono, *Legal Professional Ethics*, Surabaya: Laksbang Mediatama. 2008. Pg. 59

<sup>21</sup>Ibid

<sup>22</sup>Ibid

## Conclusion

Seeing what has been explained, a question arises how the settlement of traffic accidents can be resolved through a restorative justice approach, whereas Law Number 22 of 2009 concerning Road Traffic and Transportation does not regulate the concept of restorative justice. Without a clear procedure or rule in Law No. 22 of 2009 concerning Road Traffic and Transportation, the resolution of traffic accidents through this restorative justice approach will create a polemic for law enforcers in carrying out their duties and authorities.

## Bilbography

- Achmad Ali, *Revealing Legal Theory and Judicial Prudence*, Jakarta: Kencana Prenada Media Group, 2009.
- Ainal Mardiah et al, *Penal Mediation as an Alternative Restorative Justice Model in Juvenile Court*, (Journal of Postgraduate Law Unsyiah Kuala Vol. I Year I No.1 August 2012).
- Ali Sodikin, *Restorative Justice in the Crime of Murder: Perspectives on Indonesian Criminal Law and Islamic Criminal Law*, in *Asy-Syari'ah*, 49, Edition I June 2015.
- Arif Budiarto and Mahmudal, *Traffic Engineering*, UNS Press, Solo, 2007.
- Bagir Manan, *Restorative Justice (an introduction)*, Perum Percetakan Negara RI, Jakarta, 2008.
- Bambang Waluyo, *Law Enforcement in Indonesia*, Jakarta, Sinar Graphic, 2016.
- Barda Nawawi, *Criminal Law II*, UNDIP Faculty Lecture Material Provision Agency, Semarang: 1993.
- Barda Nawawi Arief, *National Seminar Paper on Non-Penal Approaches in Combating Crime: Limits of Criminal Law Capability in Combating Crime*, Graha Santika Hotel, Semarang, 2 September 1996,
- Eriyantouw Wahid, *Restorative Justice and Conventional Justice in Criminal Law*, Trisakti University, Jakarta, 2009.



---

Handbook on Restorative Justice Programme, New York: United Nations, 2006.

H. Siswanto Sunarso, Victimology in the criminal justice system, Sinar Graphic, Jakarta, 2014.

Howard Zehr & Ali Gohar, The Little Book of Restorative Justice, Good Books, Pennsylvania, 2003.