



## IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE CASE OF TRAFFIC ACCIDENTS THAT CAUSED THE DEATH OF THE VICTIM

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### ABSTRACT

Highways play a crucial role in socio-economic activities; however, traffic accidents resulting in fatalities remain a significant legal and social issue. The important role of this highway is sometimes not realized by road users to obey and obey traffic on the highway, so that it can cause a problem if a traffic accident causes the victim to die. The study aims to examine the implementation of restorative justice in fatal traffic accident cases in the SARBAGITA region and to identify the challenges encountered. This research used empirical legal research methods or field research with an emphasis on the gap between *das sein and das sollen* or between the aspired regulations and their practice in the field related to the problems discussed. The findings indicated that restorative justice is implemented through formal agreements, including peace request letters, settlement agreements, and dispute resolution statements. Recommendation for special case titles that agree to settlement with *restorative justice*. Investigators facilitate the settlement process and may issue a Warrant for Termination of Investigation based on restorative justice considerations.. The obstacles faced include that there are still people as victims' families who have not been able to accept the loss of their family members, the costs that must be incurred by the perpetrator and the perpetrator's family are too high (expensive) and there is a change of mind in resolving this accident case.

### INTRODUCTION

The increasing population has led to a significant rise in the number of vehicles, contributing to higher traffic density and accident risks. The important role of highways tends to be unrealized by all road users to obey and obey traffic on the highway. Common violations include running red lights, not wearing helmets, and using mobile phones while driving. Violations and negligence that occur on the road as a result of drivers who do not obey the rules often lead to traffic accidents.

A traffic accident is defined as an unexpected event on the road involving vehicles that results in casualties or material loss (Nuansa Aulia, 2012). Traffic accidents have become a serious problem in Indonesia, even if you look at the existing data, statistical data indicate that traffic accidents occur frequently in Indonesia, with significant rates of injuries and fatalities.while according to Umi Enggarsasi that "traffic accidents that occur in Indonesia can be classified into 5 causative factors, namely the existence of human error, driver factors, road factors, motor vehicle factors, and natural factors (Marye, 2010).

One of the provinces that shows a fairly high number of traffic accidents is in the province of Bali. According to BPS (2022), Bali recorded 3,620 traffic accident cases, resulting in minor injuries, serious injuries, and fatalities. The figure is sourced from 9 regencies and cities throughout the Province of Bali.

BPS revealed that there has been a significant increase in the number of traffic accidents in Bali in recent years. The number of deaths in 2024 decreased slightly compared to 2022, the number of accidents and serious and minor injuries continued to increase. Traffic accident cases that occur in the city of Denpasar are not entirely resolved through litigation but are resolved through diversion or out of court. Based on Article 1 number 31 of Law Number 22 of 2009 concerning Road Traffic and Transportation, it is stated that a Traffic Accident is an event on the Road that is unexpected and unintentional involving a Vehicle with or without other Road Users that results in human casualties and/or property loss. Article 226 Paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation states that to prevent traffic accidents is carried out through the participation of stakeholders, community empowerment, law enforcement and global



partnerships. Paragraph (2) states that the prevention of traffic accidents as referred to in Paragraph (1) is carried out with a staging pattern that includes short-term, medium-term, and long-term programs. Paragraph (3) states that the preparation of traffic accident prevention programs is carried out by the traffic and road transportation forum under the coordination of the National Police of the Republic of Indonesia.

In fatal accident cases, perpetrators are required to provide restitution; however, this obligation does not necessarily terminate criminal liability, creating tension with restorative justice principles. This is different from what is stated in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on *Restorative Justice* Article 10. *Restorative justice* is the settlement of criminal cases by involving the perpetrator, the victim, the perpetrator's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retribution (Satriana, 2013).

Restorative justice views that criminal acts are basically the same as criminal law, but in the process of seeking justice that occurs for a criminal act involves the victim, the perpetrator and the community in efforts to repair, reconcile and guarantee the sustainability of the repair business (Kansil, et al., 2015). Article 230 of the Traffic and Public Transportation Law, but the legal facts are ambiguous in the settlement of traffic accident cases where some are resolved through the judicial process and some are resolved without going through a legal process based on peace.

In positive Indonesian law, even though the defendant has provided compensation to the victim's family, this is a concept of peace, it turns out that it does not drop the criminal case as stated in article 235 paragraph (1) of the Traffic and Public Transportation Law, while in the restorative justice approach model, it prioritizes family settlement and the interests of the affected parties, both the victim, community or perpetrators, through restorative justice, the settlement of criminal cases is carried out by the process of resolving cases with peace efforts between the perpetrator, the victim and also the community as mentioned in the National Police Regulation of the Republic of Indonesia Number 8 of

2021 concerning the Handling of Criminal Acts based on Restorative Justice that in the requirements for Handling Crimes based on Restorative Justice must meet the general requirements and must also Includes the requirements of the Meter as mentioned in letter f. that it is not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a crime against life.

Based on the results of the data, there are several largest districts or cities in Bali Province in traffic accidents, including: Denpasar, Badung, Gianyar and Tabanan. The results of interviews conducted by the author in the jurisdiction of Denpasar, as one of the most populous cities in the Province of Bali, namely in 2022 there are 994 cases, of which 482 can be resolved outside court sessions, while in 2023 there are 2291 cases, of which as many as 764 can be resolved outside court sessions. Restorative justice in the case of traffic accidents that caused the death of the victim in the jurisdiction of Denpasar, Badung, Gianyar and Tabanan (SARBAGITA) and the obstacles faced in the implementation of restorative justice in the case of traffic accidents that caused the death of the victim.

## METHODS

This study employs an empirical legal research approach (field research) to examine the gap between *das sollen* (law in the books) and *das sein* (law in action) in the implementation of restorative justice in fatal traffic accident cases. This approach is chosen to analyze how legal norms are applied and interpreted in practice by law enforcement and involved parties.. The nature of this research is descriptive-analytical, this study not only describes the characteristics of restorative justice practices but also analyzes the legal and social factors influencing their implementation in traffic accident cases. or to identify patterns, relationships, and challenges in the application of restorative justice within the legal and social context of the community.

## RESULTS AND DISCUSSIONS

### Implementation of Restorative Justice in Traffic Accidents Causing Death in the Jurisdiction of Denpasar, Badung, Gianyar and Tabanan



The process of field observation and conducting interviews with several respondents who are relevant and related to the problems (legal issues) in this study, the following data was obtained:

**DENPASAR**

**LAKA DATA MD, LB, LR, RJ AND P21**

YEAR	NUMBER OF LAKA	MD	LB	LR	RJ	P21
2022	852	99	27	368	353	5
2023	2291	136	36	1822	295	2
2024	2114	122	32	1960	0	0

Source: Denpasar Police

**BADUNG**

**LAKA DATA MD, LB, LR, RJ AND P21**

YEAR	NUMBER OF LAKA	MD	LB	LR	RJ	P21
2022	165	64	13	11	72	5
2023	903	78	15	718	91	1
2024	1031	88	21	918	0	4

Source: Badung Police

**GIANYAR**

**LAKA DATA MD, LB, LR, RJ AND P21**

YEAR	NUMBER OF LAKA	MD	LB	LR	RJ	P21
2022	824	63	2	450	307	2
2023	1109	98	1	879	131	0
2024	1163	76	3	1084	0	0

Source: Gianyar Police

**TABANAN**

**LAKA DATA MD, LB, LR, RJ AND P21**

YEAR	NUMBER OF LAKA	MD	LB	LR	RJ	P21
2022	449	55	2	129	258	5
2023	890	72	5	642	171	0
2024	1027	91	10	926	0	0

Source: Tabanan Police

Based on the data, it is evident that not all fatal traffic accident cases are resolved through restorative justice mechanisms. A closer examination reveals significant variation across regions and years, indicating that the application of restorative justice is influenced by legal discretion, case severity, and the willingness of victims' families. This suggests that restorative justice is not consistently institutionalized but remains conditional and situational. There are several cases of traffic accidents that have been resolved through the judicial process. Over the last 3 (three) years, namely 2022, 2023 and 2024, in the jurisdiction of Badung, Gianyar and Tabanan, there have been a number of traffic accident cases that can be resolved through restorative justice efforts.

Normatively, fatal traffic accident cases are classified as criminal offenses requiring judicial resolution. However, empirical findings reveal a divergence from this principle, as many cases are informally resolved through restorative justice, highlighting a gap between legal doctrine and practice. But in practice, traffic accident crimes can also be resolved outside the court. In practice, out-of-court settlements are commonly pursued through family-based negotiations, reflecting socio-cultural preferences for consensus and reconciliation, namely between the perpetrator and the victim's family to make peace (Lubis, 2018). The application of *restorative justice* in cases of traffic accidents that cause human casualties and/or loss to property, this is regulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice in article 10 letter (b) and article 7 letter (c) related to the application of restorative justice to traffic accident cases.

**Handling of traffic accidents that caused the death of victims through restorative justice in Denpasar jurisdiction**

Interview findings indicate that mediation plays a central role in resolving fatal traffic accident cases. However, this process is largely driven by pragmatic considerations such as compensation and social harmony rather than a structured legal framework, suggesting an informal institutionalization of restorative justice. This is done considering that the accident victim died and all costs incurred are charged to the perpetrator, so that legal problems can be resolved. The existence of *restorative justice* efforts makes the case of a traffic accident that caused the death of the victim can be resolved



through family means and all parties involved find the best way to resolve the case to get a sense of justice for all parties.

### **Handling of traffic accidents that caused the victim's death through restorative justice in the Badung jurisdiction**

While procedural responses to fatal accidents are standardized, the transition from formal investigation to restorative settlement depends heavily on discretionary decisions and mutual agreement between the parties. The police held a meeting between the victim's family and the perpetrator and the perpetrator's family to find the best solution for both parties. If the victim's family and the perpetrator find a mutual agreement that benefits both parties, then the handling of the accident that caused the victim's death only comes to the title of the case.

### **Handling of traffic accidents that caused the death of victims through restorative justice in the jurisdiction of Gianyar**

In the process of handling traffic accidents with the deceased victim and applying *restorative justice*, both the victim's family and the perpetrator reached a mutual agreement. One of them is by compensating material losses resulting from accidents that can be resolved through an out-of-court process. In the process of settling material damages, it is prohibited to involve investigators/auxiliary investigators, because only the parties involved in traffic accidents are involved. In accordance with Perkap No. 8 of 2021, it aims to solve criminal acts by prioritizing restorative justice that emphasizes restoration to the original state and the balance of the interests of the victim and the perpetrator. The variation in Gianyar, where some cases continue to be processed through formal courts, indicates inconsistency in the application of restorative justice. This may be influenced by the degree of negligence, public pressure, or differing interpretations of legal provisions among law enforcement officials. Namely not all, but there are some cases of traffic accidents with the death of the victim will still be resolved in court. Because considering that the accident victim until he died, it was negligent in driving. So the nature is to mitigate the punishment, not abort.

### **Handling of traffic accidents that caused the death of victims through restorative justice in the jurisdiction of Tabanan.**

In accordance with Perkap No. 8 of 2021, if there is a victim who dies who wants to be *restorative*

*justice*, it should be carried out at the stage of the investigation (case title). Have the rights of the victim been fulfilled? The leader as the title of the case is the Chief of Police. If you agree with the considerations, you have reconciled (a peace letter and the revocation of the case from the victim to the suspect). However, *restorative justice* is only given once to the suspect. In the future, if the suspect is involved again in a traffic accident/crime outside of the traffic accident, it must all be in legal proceedings. The implementation of *restorative justice* is carried out when formal and material requirements are completed. The formal requirements are such as a peace letter, a statement of non-demand from the victim and a letter of request for dismissal of the case from the victim which will be submitted to the leadership, in this case the Chief of Police.

Restorative justice for the deceased victims, according to the author, depends on the *discretion of* law enforcement officials and also looks at the aspects of the parties' faults (*culpability*). The complete contents of articles 7 and 10 of the National Police Regulation. No. 8 of 2021 as follows:

Article 7:

"Special requirements as referred to in Article 3 paragraph (1) letter b, are additional requirements for criminal acts: (a) information and electronic transactions; (b) Drugs; and (c) traffic".

Article 10:

"Special requirements for traffic crimes as referred to in Article 7 letter c, include: (a) Traffic accidents caused by driving a motor vehicle in dangerous ways and circumstances that result in material loss and/or minor injuries; or, (b) Traffic accidents on the road due to negligence resulting in human casualties and/or property loss".

The findings can be interpreted through the lens of utilitarianism, where decisions to apply restorative justice are often based on achieving the greatest benefit—such as social harmony and efficiency—rather than strict legal retribution. *Utilitarianism* is an ethical understanding that argues that what is good is useful, beneficial, and profitable (Robert, 1995). Efforts to resolve traffic accident cases in the jurisdiction of Denpasar, Badung, Gianyar and Tabanan, using the framework of restorative justice is that during the process of handling and investigating accident cases, if both parties express a desire to reach a peaceful settlement outside the trial, the investigator will provide mediation assistance to facilitate communication and negotiation between



them. In addition, investigators also brought together both parties to provide clarification regarding the provisions stipulated in Law No. 22 of 2009, especially article 310. This is done to ensure that each party has a comprehensive understanding of the circumstances surrounding the traffic accident case. Empirical observations suggest that restorative justice is commonly perceived by the community as “peace-based settlement,” reflecting local socio-cultural values that prioritize harmony.

Peace in criminal law means that the settlement of criminal cases is carried out outside the judicial process, that is, by means of peace between the two parties, just as in civil cases. This peace institution is juridically formally not recognized in the laws and regulations of the criminal law, so although restorative justice is formally recognized in police regulations, its application is sometimes perceived as lacking a strong legal foundation, particularly when it intersects with serious offenses such as fatal accidents (Kansil, et al., 2015). In Supreme Court Decision No. 403 K/Pid/2011, peace was not achieved between the perpetrator and the victim's family, and in the Supreme Court Decision No. 553 K/Pid/2012, the perpetrator did not have good faith to make peace with the victim's family, so according to the panel of judges, the absence of peace was used as an incriminating consideration for the defendant's guilt (Barhamudin & Dahwir, 2021).

The restorative justice method emphasizes the active involvement of the parties affected (directly or indirectly) of the crime that occurred to find a solution, and does not rely on state law enforcement with formal mechanisms in place, but is characterized by an informal and voluntary process. This is in line with the theory of justice put forward by Thomas Aquinas, namely Justice should be reflected and become part of the substance of law. Consistent legal performance in relatively equal application and procedures against behavior that deviates from legal norms guarantees the occurrence of substantive justice. *Restorative justice* as a criminal concept intends to find a way to enforce a more fair and balanced penal system, for example between the interests of perpetrators and victims as well as the community (Bagir M, 2017). *Restorative justice* is in principle a philosophy (basic guideline) in the peace process outside the judiciary by using mediation or deliberation in achieving justice that is expected by the parties involved in the criminal law, namely the perpetrator of the crime (his family) and the victim of

the crime (his family) to find the best solution that is agreed and agreed upon by the parties (Nainggola, 2018).

As a consequence, the values of substantive justice that must be realized in common life include: *first*, distributive justice, which is a relationship of justice between the state and its citizens, in the sense that it is the state that is obliged to fulfill justice in the form of welfare, as well as opportunities in coexistence based on rights and obligations. *Second*, legal justice or obedient justice is a relationship of justice between citizens and the state, and citizens are obliged to fulfill justice in the form of obeying applicable laws and regulations. *Third*, cumulative justice, which is the relationship of justice between citizens and each other in a reciprocal manner.

According to Yuniar (2004), restorative justice has several forms of processes as applied in Indonesia, namely *victim offender mediation*, *family group conferencing*, *restorative conferencing*, *community justice boards (community restorative boards)*, CRB. In the context of *restorative justice*, the application of peaceful methods in resolving traffic accident cases has received resistance and prejudice from both victims and suspects in law enforcement because there is still a stigma in society. This negative bias causes the misconception that the investigator or auxiliary investigator who aims to facilitate the mediation process is to advocate and receive compensation from one of the parties, especially the perpetrator. In connection with the situation, the investigator or assistant investigator gives autonomy to both parties to conduct negotiations. The investigator or assistant investigator will conduct a mediation process in the event that both parties cannot reach a mutual agreement and seek the involvement of investigators or assistant investigators to facilitate the mediation process. This can first address the potential negative assumption that the investigator or auxiliary investigator may have no intention or inclination to pursue a peaceful settlement or out-of-court settlement. It also aims to counter the notion that they can defend or be financially compensated by certain parties involved.

## CONCLUSIONS

The study finds that the implementation of restorative justice in fatal traffic accident cases within the SARBAGITA region is primarily carried out through informal and semi-formal mechanisms,



including peace agreements and settlement documents. However, these practices reflect a procedural approach rather than a fully institutionalized restorative justice system. Recommendation for special case titles that agree to settlement with *restorative justice*. The Law enforcement officials play a central role in facilitating restorative justice and may terminate investigations based on restorative considerations, indicating the presence of discretionary authority in case resolution. The obstacles can be categorized into several dimensions: (1) psychological barriers, particularly the inability of victims' families to accept the loss; (2) economic constraints, including high compensation costs; (3) socio-cultural factors, such as stigma toward restorative justice; and (4) legal uncertainties due to the absence of standardized regulations, the costs that must be incurred by the perpetrator and the perpetrator's family are too high (expensive), there is a change of mind from the Koban family who initially agreed to a settlement through restorative justice but changed the process to the court because negative stigma that exists in society regarding restorative justice and there is no standard regulation regarding the handling of traffic accidents whose victims die through *restorative justice*.

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