

# Settlement of Traffic Accident Crimes through the Principle of Restorative Justice in the Sorong City Area

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*Traffic Accident Crimes, Restorative Justice, Customary Institutions.*

## ABSTRACT

This study focuses on the first problem of solving traffic accident criminal cases that have been applied in law enforcement and how to reconstruct the ideal traffic accident crime resolution based on a restorative justice approach. The method used in this study is normative juridical research with a research approach in the form of a normative approach. The result of this study is that direct involvement between perpetrators, victims, and communities in solving criminal cases is emphasized in the restorative justice approach. Criminal acts involving traffic accidents can be resolved in accordance with the principles of restorative justice. Because it serves the interests of victims and perpetrators based on two perspectives (victims and perpetrators) in terms of accident crimes, the use of restorative justice is essential. The application of restorative justice in solving criminal cases that prioritizes the interests of victims and perpetrators in finding solutions to crimes and their consequences has been outlined in a circular issued by the Indonesian National Police. The traditional dynamic between local communities and their governments in fighting crime can be changed by the use of restorative justice in cases involving accidents. Customary institutions are still often used in Sorong City by local communities to resolve conflicts, but Law No. 22/2009 on Traffic and Road Transport has stipulated the threat of criminal penalties for those responsible for traffic accidents. Therefore, the police had to investigate the traffic accident even if the victim's family decided not to prosecute.

## INTRODUCTION

Traffic as one of the movements of vehicles and community roads that play a role in facilitating national development in various fields Yuliana (2020). Traffic is also one of the most important means for the community in facilitating various community activities, supporting population mobility and facilitating development in various fields. Traffic problems are one of the national-scale problems based on community development. One of the problems in traffic is the high number of traffic accidents. Traffic accidents not only cause casualties but also cause material or financial losses (Rajasekaran *et al.* 2021; Yang *et al.* 2023).

Traffic accidents are events that occur in a traffic movement due to errors in the traffic shaping system involving humans as drivers, vehicles, roads and the surrounding environment (Chand *et al.* 2021; Lee 2023). Traffic accidents also occur due to an imbalance between the number of vehicles and existing road facilities, especially the expansion of the highway network (Soekanto 1984).

The increasing volume of private vehicles, especially motorcycles on the highway which is not accompanied by the addition of adequate road access to accommodate the number of vehicles has a negative impact on other road users, such as congestion and high numbers of traffic accidents. Unsafe, disorderly, unsmooth and inefficient traffic will cause various difficulties in society (Djajoesman, 1986).

Traffic accidents in Indonesia indicate a significant relationship between the behavior of accident events and their traffic characteristics, for example on urban roads in general, the largest involved accidents are motorcycles, pedestrians and bicycles which can result in fatal traffic accidents, while accidents outside the city indicate the dominance of four-wheeled vehicle involvement and above with a fatality rate that is also alarming (Molovcáková *et al.* 2021; Krehic 2023).

In traffic accidents, there is often a contradiction, where traffic criminals have carried out their obligations to compensate victims or their families but are still subject to criminal sanctions. This is often considered unfair to perpetrators of road traffic crimes. Therefore, a discourse arises so that diversion can be pursued with a restorative justice approach for perpetrators of road traffic crimes (Kirkwood 2022; April *et al.* 2023). Restorative justice is a way to solve criminal cases involving the community, victims and perpetrators of crimes to create justice for all parties so that it is expected to create the same conditions as before the crime and to prevent further crimes. The goal of restorative justice, in other words, is the restoration of the relationship between the perpetrator and the victim (Hobson dan Payne 2022; Marder 2022).

The restorative justice approach is an approach that aims to answer dissatisfaction with the work of the existing Criminal Justice System (SPP). This approach is used as a strategic frame for handling criminal cases. The principle of restorative justice is an inherent part of the criminal justice system in developed countries (van Barligen 2015). The principles of restorative justice as formulated in the United Nations Resolutions and Decision Adopted by ECOSOC at its Substantive Session of 2002 (Muladi *et al.* 2023).

The original or theoretical concept of restorative justice is the informal resolution of conflicts to restore relationships. Restorative justice in Indonesia tends to be informal in a formal social institution. Restorative justice is a philosophy, process, idea, theory and intervention that emphasizes and corrects harm caused by criminals (Mohammad dan Gearhart 2021; Gerson 2022). This process stands in stark contrast to the standard way of dealing with crimes that are viewed as offenses committed against the state. Restorative justice finds a philosophical basis in the fourth precept of Pancasila, namely deliberation as a priority in making decisions. The purpose of solving problems with mediation is to humanize the justice system, namely justice that can answer the essential needs of victims, perpetrators and society (Prayitno 2012).

There is no specific formulation governing restorative justice, but this does not mean that the application of restorative justice has no legal basis, especially in the Theory of Legal Discovery, which is the task of law enforcement that includes finding the living law in society (Manan *et al.* 2021). If the existing laws in society cannot solve existing problems, according to sociolegal studies, law enforcement officials do not mean silence and neglect without creating justice (Semekto 2006).

The idea of restorative justice first emerged among Criminal Law experts as a reaction to the negative impacts of applying criminal sanctions with their repressive and coercive nature. This can be seen from Hulsman's statement that the Criminal Law system was built with the thought that the Criminal Law must cause harm. According to Hulsman, this idea is very dangerous. Therefore, Hulsman proposed the idea of abolishing the criminal law system, which is considered to bring more harm than good and replacing it with other ways that are considered better (Hulsman 1998). In the context of traffic accidents in Sorong City, West Papua, there are several things to consider from the perspective of the customary law of the Moi tribe, namely the Moi tribe has a distinctive customary law system that regulates the actions that must be taken in the event of a traffic accident involving members of the Moi tribe. In the customary law of the Moi tribe, the action that must be done is usually through a traditional ceremony called "garewa". Garewa is a traditional ceremony carried out as a form of peace between the families of victims and perpetrators of accidents. In this ceremony, the perpetrator of the accident must give a sum of money as compensation to the victim's family, perform various rituals as a sign of apology, and ask for forgiveness from the victim's family.

However, in addition to the customary law of the Moi tribe, national legal regulations apply in Indonesia, including in the case of traffic accidents. In the event of a traffic accident in Sorong City, the parties involved in the accident will usually be regulated by Law Number 22 of 2009 concerning Road Traffic and Transportation. Meanwhile, if there is a discrepancy between customary law and national law, then usually national law will take precedence as applicable law. However, parties involved in traffic accidents can try to resolve the problem peacefully by involving Moi tribal customs as a way to resolve conflicts fairly and harmoniously. Customary law refers to the principles and practices of unwritten law that are passed down from generation to generation in a particular community or society. These customs are often deeply rooted in people's cultures and traditions and may have been practiced for centuries. In recent times, customary law has gained recognition as a legitimate source of law in many jurisdictions, including in the context of traffic regulations.

## METHODS

The type of research used in this study is juridical-normative, and is descriptive analytical using both primary, secondary and tertiary legal materials as the main data. Data analysis is carried out qualitatively with a theoretical abstract approach. While the approach used in this study is the statutory approach (statute approach) and concept approach (conceptual approach). The statute approach is carried out by reviewing all laws and regulations related to the legal issue being handled. While the conceptual approach is an approach that departs from the views and doctrines that develop in legal science (Ahmad *et al.* 2011).

The legal materials examined in this study consist of First, primary legal materials, namely: Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP); Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia; Law Number 22 of 2009 concerning Road Traffic and Transportation; Law Number 48 of 2009 concerning Judicial Power; Decision of the Supreme Court of the Republic of Indonesia Number: 096/KMA/SK/VII/2011 concerning the Jurisprudence Publishing Team of the Supreme Court of the Republic of Indonesia concerning the Formulation of Legal Rules; Supreme Court Jurisprudence Decision No. 1600 K/Pid/2009. Second, secondary legal materials, namely secondary legal sources in the form of books, articles in scientific journals, newspapers, magazines, and others related to the topic under study, and Third, tertiary legal materials, namely: dictionaries, encyclopedias, and others that explain more concisely from a study. These data are collected using the document study method.

## RESULTS

### Settlement of Traffic Accident Crimes through the Principle of Restorative Justice in the Sorong City Area

Along with the development of criminal law, there is a tendency for the criminal paradigm and the idea of justice to change from retributive justice (criminal justice) to restorative justice. In terms of traffic accident crimes can be resolved using the principles of restorative justice and criminal law policies in solving traffic accident cases (Rona *et al.* 2020) are some of the many studies that have been conducted on this matter. Restorative justice can help the parties involved in traffic accidents to reach a settlement and achieve justice and benefit for all parties.

Restorative justice is a model approach developed in the 1960s to help solve criminal cases. This strategy emphasizes direct involvement between perpetrators, victims, and communities in resolving criminal cases, in contrast to traditional criminal justice system strategies. Restorative justice is a legal framework that, according to Liebmann, "aims to restore the well-being of victims, perpetrators, and communities harmed by crime, as well as prevent the occurrence of violations or criminal acts." (Liebmann 2007) In addition, Liebmann offers the following formulation of the basic principles of restorative justice: (a) prioritizing victim support and recovery; (b) the offender is responsible for what he does; (c) dialogue between victim and perpetrator to reach understanding; (d) there is an attempt to

place the damage caused properly; (e) the offender must be aware of how to avoid future crimes; and (f) the community helps integrate both parties, both victims and perpetrators (Liebmann 2007).

The interests of victims have a much more important role in the restorative process compared to the current criminal justice system. Laws defining victims' procedural rights during criminal proceedings or juvenile criminal procedural law have been adopted in several countries (Hotmaulana Hutauruk 2013). To resolve criminal cases out of court, restorative justice can be applied in one of several ways. These methods can be developed due to extensive research (Utomo *et al.* 2019).

Community involvement can also be part of restorative justice, allowing affected community members to participate in the dialogue process and assist victims and perpetrators. Encouraging a sense of accountability and responsibility within the community can help restore trust. It is important to remember that restorative justice cannot replace the criminal justice process. Criminal charges may still be needed in serious traffic accidents to hold perpetrators accountable for their actions and protect the public. Restorative justice aims to address the harm inflicted by crime in a more comprehensive, community-focused way. It can be used as a complementary approach to criminal justice.

Traffic accidents are criminal offenses and are regulated in Article 310 paragraphs (2), (3), and (4) of Law No. 22 of 2009 concerning traffic and road transportation. Before promulgated the Road Traffic and Transport Law, traffic accidents were only regarded as private matters. The Road Traffic and Transport Law is considered a legal breakthrough because it places traffic accidents, which were previously only considered as negligence (*culpa*), as a criminal offense/crime that must be enforced by public law. In public law, in this case, criminal law, any problems that arise will be handed over to the state through the judicial system for its resolution. The settlement process in the criminal justice system does not involve perpetrators or victims. Both the victim and the perpetrator play a minor role, and there is no space available for the perpetrator and victim to find more personalized justice.

Victims feel the impact of traffic accidents and their families and the surrounding environment. People are forced to witness the injustices and crimes that take place in their neighborhoods. These people can be involved if the victim of a traffic accident experiences psychological, physical, or social problems as a result of the accident. Therefore, traffic accident cases need to involve the public in their resolution. Intensive and comprehensive resolution of traffic accident cases focuses on victims, perpetrators, and their families and on people directly affected by accidents (Primasari 2007).

According to Marshall (1996), the definition of restorative justice has been modified with participation from perpetrators, victims, families, and communities. Marshall argues that the restorative justice approach is a method of solving criminal cases involving all parties involved to ultimately reach a settlement and peace in dealing with events that occur after the crime and finding ways to deal with it in the future (Marshall 1996). The use of restorative justice is a new paradigm in dealing with crime. According to Yarn (2023), restorative justice emphasizes the pain or loss experienced by the victim more than the perpetrator's punishment. Car accident victims do not get anything from the punishment imposed on the perpetrator.

The idea of restorative justice is a method of resolving violations of the law by bringing victims and perpetrators together in a meeting so that they can have a voice. Instead of emphasizing how the perpetrator should be held accountable for the crimes that have been committed and how the victim can be restored to their original condition, restorative justice prioritizes how the perpetrator can be held accountable for the crimes that have been committed. The main goal of restorative justice is to create a fair trial, but it is also anticipated that all parties, including perpetrators, victims, and society, will play a significant role in the process. The victim is entitled to compensation agreed upon by the perpetrator and is expected to compensate the loss or suffering suffered by the victim in proportion to the suffering experienced.

In addition, it is hoped that the perpetrator will admit his guilt through restorative justice. Mediation, victim-perpetrator mediation, reparations, family group meetings, victim-perpetrator

groups, and victim awareness are examples of restorative justice resolution techniques. The basic principle of restorative justice is encouraging joint participation between perpetrators, victims, and community groups to resolve an event or criminal act. Perpetrators, victims, and communities are positioned as stakeholders who directly seek solutions that are considered fair to all parties.

Restorative justice is used in criminal cases involving children as perpetrators, but nowadays, there is often discussion about the use of restorative justice in cases of fatal traffic accidents. This raises some problems. First, there is the concern that perpetrators will act arbitrarily because they believe that they can compensate the accident victim or their family, allowing them to repeat their actions in the future because the punishment they received does not deter them. Secondly, if there is peace between the parties before the legal process, can the perpetrators not be prosecuted? This raises concerns because it can result in the absence of legal certainty. When restorative justice is applied in the case of traffic accidents, these two issues often lead to ambiguity.

Conversely, given the limitations of criminal law in dealing with crime, it will cause more problems. According to Barda Nawawi Arief, the nature/essence and purpose of criminal law itself can be a factor causing its limited effectiveness (Arief 2011). The current legal sanctions do not serve as a remedy to address the cause (source) of the disease and also contain potentially harmful elements. The police generally use the penal mediation method to resolve traffic accident disputes so that both parties benefit from resolving the case (Hairuddin 2016). The victim's interests are not affected by punishment of a personal nature. The application of criminal law is further weakened by the lack of types of criminal sanctions regulated in the traffic and road transport law. The Road Traffic and Transport Law only lists criminal sanctions, imprisonment, and fines individually or collectively.

Fairness, according to John Rawls, is defined as fairness, which includes the idea that free and rational people should be placed on an equal footing when advancing their interests should be placed on an equal footing when they started, and that this is a necessary condition for them to join the organization they want to join. Join the group they want (Sutrisno 2007). Thus, if the existing order can be accepted by all individuals fairly through sincere acceptance of all existing order by all groups, classes, races, ethnicities, and religions without pressure, then the existing order is automatically transformed into just.

When efforts to apply restorative justice prioritize the interests of perpetrators over the interests of victims, the debate about its application in cases of traffic accidents resulting in fatalities has become increasingly raised. Public perceptions are skewed towards the application of restorative justice. Then, the community debated the advantages and disadvantages of using restorative justice to solve criminal cases of traffic accidents. The pro opinion states that because the factors causing traffic accidents are usually due to accidents or negligence, imprisoning the perpetrator will be a very burdensome punishment. On the other hand, opposing viewpoints argue that victims of traffic accidents and the punishment meted out to perpetrators have fulfilled the sense of justice. Therefore, in using the interpretation of accident principles must be seen from the point of view of victims and perpetrators of traffic accidents before applying restorative justice to traffic accident cases classified as criminal acts.

The concept of restorative justice emerged in response to the negative impact of repressive and coercive criminal sanctions, as described by Hulsman. This idea has gained recognition in various countries, including Indonesia, and has been applied to several cases of traffic accidents resulting in fatalities. Although Law Number 22 of 2009 concerning Road Traffic and Transport has regulated criminal sanctions for motorists whose negligence results in fatalities, victims in traffic accidents also need attention. In the discipline of victimology that addresses the issue of victims in all aspects, including their rights and obligations in the Criminal Justice System, some cases are resolved through the active participation of victims, perpetrators, and the community in relation to law enforcement officials. Customary law and conflict resolution mechanisms of the Moi Tribe are also relevant to the concept of restorative justice as they emphasize community involvement and consensus-building.

In the event of imposing criminal sanctions, customary settlement is required in Sorong City. In criminal cases, indigenous peoples or Moi customary chiefs can review settlements in litigation or out of court. In addition, if the offender refuses to comply with the sentence of confinement, Moi's customary law can serve as a subsidiary or substitute for the main issue, such as a fine in lieu of the sentence of confinement. The Moi sacrifice and chief determine the fine amount, which can be paid with pigs, dishes, urns, or other items of the traditional economy of the Moi tribe.

The Moi people follow customary law as a code of conduct, which is crucial in resolving disputes. Indigenous peoples who are perpetrators in criminal cases must pay material damages, usually in monetary terms, as part of the mediation process. The criminal case is considered over after the victim receives payment when they withdraw the police report. As long as the victim's request to pay the customary fine is met, the Moi community is happy with the customary law procedure. Implementing customary law has advantages, such as deterring potential violators and providing a sense of justice to victims. In applying Moi customary sanctions or fines, the process is generally the same for tribes belonging to different clans. The traditional chief will bring together both parties to make peace.

In that case, criminal cases are then dealt with in accordance with the relevant national law after customary law is applied. The outcome of a customary law settlement can be a guideline or factor in a court decision if the case goes to court. The Sorong City Resort Police works closely with indigenous communities in the area, especially the Moi indigenous people, to solve criminal cases in Sorong City using customary approach methods. The Sorong City Resort Police cooperates with litigants (customary institutions) or indigenous peoples involved in minor criminal cases. This procedure includes receiving reports, calling parties and witnesses, conducting discussions, and making decisions. Leaders of customary institutions or Indigenous Peoples concerned are also involved.

In the case of traffic accidents, customary law can also apply, especially in rural areas where traditional norms and practices are still dominant. On the other hand, customary law can be complex and differ from national law, creating ambiguity and uncertainty for perpetrators and victims. In Sorong Regency, those who cause accidents must compensate victims or victims' families based on customary law. However, they can still be held criminally liable under national law despite an obligation to indemnify. This gives rise to counterarguments where those who commit traffic offenses may believe they are being unfairly punished even though they have fulfilled their obligation to provide damages.

Serious injury or even death from a traffic accident can lead to criminal charges under several laws and regulations, including Law No. 22 of 2009 on Road Traffic and Transport and the Criminal Code (KUHP). In such situations, the offender can be punished with fines and imprisonment, which in some cases may seem unfair, especially if the offender has compensated the victim or the victim's family. Given these difficulties, there is increasing interest in researching restorative justice strategies to deal with traffic accidents.

To find a resolution that satisfies the needs of both parties, restorative justice focuses on repairing the damage caused by crime and involves direct communication between victim and perpetrator. This strategy can be especially helpful in collision situations where there may be a need for ongoing support and rehabilitation due to the potential for severe emotional impact on both parties. One alternative strategy is restorative justice, which aims to repair the damage caused by transgressions and repair the bonds between the parties involved. This strategy can result in a fairer and more feasible settlement for all parties, including victims, victims' families, and perpetrators.

In general, traffic accidents involve various legal systems and cultural norms, and it is still difficult to find a fair and appropriate solution to the harm caused by these accidents. Restorative justice may be a promising avenue, but more research and testing are needed to understand its potential in this situation. Customary law and restorative justice can be complementary mechanisms to resolve conflicts and advance justice in Sorong Regency and beyond, while national laws and regulations provide a framework for dealing with traffic accidents.

## CONCLUSION

From the study results, it can be concluded that direct involvement between perpetrators, victims, and the community in solving criminal cases is emphasized in the restorative justice approach. Criminal acts involving traffic accidents can be resolved in accordance with the principles of restorative justice. Because it serves the interests of victims and perpetrators based on two perspectives (victims and perpetrators) in terms of accident crimes, the use of restorative justice is essential. The application of restorative justice in solving criminal cases that prioritizes the interests of victims and perpetrators in finding solutions to crimes and their consequences has been outlined in a circular issued by the Indonesian National Police. The traditional dynamic between local communities and their governments in fighting crime can be changed by using restorative justice in cases involving accidents. Customary institutions are still often used in Sorong City by local communities to resolve conflicts, but Law No. 22/2009 on Traffic and Road Transport has stipulated the threat of criminal penalties for those responsible for traffic accidents. Therefore, the police had to investigate the traffic accident even if the victim's family decided not to prosecute. Restorative justice offers different viewpoints on how to deal with crime and its impact on victims, perpetrators, and society. The Moi indigenous people in Sorong City have their own customary law system that prioritizes the principles of kinship and negotiation to reach mutually beneficial agreements in criminal cases, especially those involving traffic accidents. The Moi culture has created several mechanisms, such as "kalak foo" and "bless tea", to resolve disputes in their social and cultural life. Traditional methods are still important as representations of Moi culture and history, although their popularity is declining in urban areas. To represent indigenous peoples in external relations involving indigenous interests, the Malamoi Indigenous Peoples' Council manages and resolves customary customs and customary law issues. In Sorong City, a customary settlement is required to impose a criminal sentence, and a criminal case is considered completed when the victim has received compensation. The Moi community generally favors the customary law process because it provides a sense of justice for victims and deters potential perpetrators. If the matter is brought to court, the conclusion of a customary law settlement can be used as a precedent or as a determining factor by the court. To solve criminal cases in Sorong City using traditional techniques, the Sorong City Resort Police works closely with local indigenous people, especially the Moi indigenous people.

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