

The Effectiveness of the Implementation of Restorative Justice by the Asahan District Attorney's Office in Resolving Traffic Accident Cases Resulting in Fatalities

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Abstract

This study aims to analyze the effectiveness of the implementation of termination of prosecution based on restorative justice in resolving traffic cases resulting in fatalities. The approach employed is normative juridical, supported by empirical data, through an analysis of statutory regulations, legal doctrines, and law enforcement practices. The results of the study indicate that the application of restorative justice in terminating prosecution provides an opportunity to achieve a more humane, efficient, and recovery-oriented resolution of cases. From the victim's perspective, this mechanism offers a faster avenue for recovery through compensation and direct apologies. For the offender, this approach prevents stigmatization and provides an opportunity to assume social responsibility. However, there is a potential imbalance in the protection of victims' rights if the restorative process is not carried out voluntarily and transparently. Furthermore, from a societal perspective, the implementation of restorative justice can enhance the sense of justice, although in some cases it may still give rise to perceptions of unfairness if it is considered to overly accommodate the interests of the offender. Therefore, clear standards, supervision, and active participation from all parties are necessary to ensure that the effectiveness of restorative justice truly reflects a balance between legal certainty, justice, and utility.

Keywords: *Restorative Justice, Prosecution Service, Traffic, and Fatalities.*

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Introduction

The Indonesian criminal law system is entering a new phase in its development. One form of reform within Indonesian criminal law is the regulation of criminal law from the perspective of achieving justice through improvement and restoration of conditions following an incident and the criminal justice process, known as restorative justice. This concept differs from retributive justice (which emphasizes justice through retaliation) and restitutive justice (which emphasizes justice through compensation).[1]

The Draft Criminal Code (RUU KUHP) represents a material reform of criminal law. This reform is an effort to realize legal ideals, and thus it can be said that the RUU KUHP is a manifestation of Indonesian identity. The orientation of legal reform is not merely to improve the law, but to replace it with a better one. Therefore, the RUU KUHP does not only introduce necessary changes but also seeks to break away from the paradigm of colonial legal heritage. Legal reform can serve as a foundation for shaping the character of the nation. It represents a real condition moving toward an ideal condition, making the RUU KUHP a method for planned social and cultural transformation within society. The principle of restorative justice accommodated in the RUU KUHP can be observed in several provisions, including Articles 2, 12, 54, and 55.[2]

From a social science perspective, crime is understood as a social phenomenon arising from structural injustice or as a manifestation of diverse human behavior, which represents reactions to socio-economic class conditions of individuals or groups within society. Regardless of its origin, individuals in weak economic conditions and under pressure to meet their basic needs, compounded by a lack of moral or spiritual guidance, tend to think short-term. It can be said that they may justify any means to fulfill their needs.[3]

In criminal law, criminalization is part of criminal policy. Criminal policy refers to the efforts undertaken by the state to combat crime, which essentially forms an integral part of broader efforts to protect society, with the ultimate aim of achieving social welfare.[4]

The phenomenon of traffic accidents resulting in fatalities constitutes one of the significant issues within the criminal justice system. The high rate of such accidents not only reflects problems on the road but also indicates the complex interplay of social, cultural, and legal factors. In practice, the resolution of traffic accident cases often creates tension between the interests of law enforcement and the public's sense of justice. This is particularly evident in cases involving fatalities, where demands against the offender tend to favor a retributive approach. However, such an approach does not always provide satisfaction for all parties involved. Therefore, there is a need for a mechanism that is more oriented toward restoration. One approach that has begun to develop is restorative justice, which is expected to serve as an alternative means of resolving cases in a more equitable manner.

Restorative justice is a concept of criminal case resolution that emphasizes the restoration of relationships between the offender, the victim, and the community. This approach does not solely focus on punishment but rather on efforts to repair the harm caused by a criminal act. In traffic accident cases, restorative justice is particularly relevant because many incidents involve negligence rather than intentional wrongdoing. Therefore, an overly repressive approach may overlook humanitarian aspects and the needs of both victims and offenders. Restorative justice provides space for dialogue among the parties involved to reach a mutual agreement. Through this mechanism, it is expected that more just and sustainable solutions can be achieved. In addition, this approach can help reduce the burden of cases in the courts, thereby contributing to the effectiveness of the criminal justice system.[5]

Restorative justice is a process of resolution conducted outside the formal criminal justice system, involving the victim, the offender, their respective families, the community, and other stakeholders concerned with the criminal act in order to reach an agreement and resolution. It is a fair settlement process that engages offenders, victims, their families, and other related parties in a non-criminal approach, collectively seeking solutions to the crime and its consequences, with an emphasis on restoration rather than retribution.[6]

The implementation of restorative justice has been supported by various legal frameworks, including internal policies of law enforcement institutions. The prosecution service, as one of the key law enforcement bodies, plays a role in implementing this restorative approach. Through its authority, the prosecution service may terminate prosecution based on restorative justice considerations under certain conditions. This provides an opportunity for resolving cases outside formal judicial proceedings. Nevertheless, the implementation of this policy still faces various challenges. One of the main obstacles is the difference in perceptions of justice between law enforcement officials and the public. Furthermore, not all cases are suitable for resolution through a restorative approach.

The Asahan District Attorney's Office, as one of the regional law enforcement institutions, bears responsibility for handling criminal cases, including traffic accidents resulting in fatalities. In practice, the prosecution service does not merely function as a public prosecutor but also acts as a facilitator in resolving cases through restorative justice. This reflects a paradigm shift within the criminal justice system—from a punitive orientation toward a restorative one. However, the effectiveness of implementing restorative justice at the regional level still requires empirical assessment. This is important to determine the extent to which such policies can be optimally implemented. Additionally, the social and cultural conditions of the local community also influence the success of its application.

In cases of traffic accidents resulting in fatalities, a dilemma often arises between legal demands and the need for a peaceful resolution. On the one hand, criminal law requires accountability for the acts committed. On the other hand, the victim's family may prefer a resolution based on familial or amicable settlement. This reflects the need for a more flexible approach in resolving such cases. Restorative justice offers a solution by prioritizing deliberation and mutual agreement. This approach enables offenders to take direct responsibility toward the victim or their family. Additionally, victims are given the opportunity to express their feelings and expectations.

As illustrated by a case handled by the Asahan District Attorney's Office, the process began with an investigation by the Asahan Police Resort concerning a traffic accident or negligence resulting in death, as stipulated in Article 310 paragraph (4) of Law Number 22 of 2009 on Road Traffic and Transportation. A motorcycle rider carrying a passenger was allegedly traveling at high speed and without due care. Upon reaching the scene, the rider struck a pedestrian who was crossing the road from the right shoulder to the left shoulder (from BP. Mandoge toward Kisaran), resulting in a traffic accident. The pedestrian sustained serious injuries and was initially treated at Sari Ramadhan Clinic, then referred to Abdul Manan Simatupang Hospital in Kisaran, and subsequently to Mitra Sejati Hospital in Medan, while the rider and passenger also suffered injuries.

Following the various procedures undertaken by the Asahan District Attorney's Office, the institution acted as a facilitating prosecutor in the process of terminating prosecution based on restorative justice in the traffic accident case. The suspect was charged under Article 310 paragraph (4) of Law Number 22 of 2009 on Road Traffic and Transportation. This process was conducted based on an order to facilitate a restorative justice-based settlement, as stated in Letter Number: Print-6210/L.2.23/Eku.2/10/2023 dated October 5, 2023.

Based on the aforementioned traffic accident case, the parties involved chose to resolve the dispute through deliberation or non-litigation mechanisms as an effective and efficient alternative, aiming to reach a mutually beneficial (win-win) solution. In contrast, litigation through the courts often results in one party winning and the other losing, which may lead to dissatisfaction, particularly for the losing party.[7]

The reasons and necessity for applying alternative dispute resolution include the offender's sense of guilt and remorse, followed by mutual agreement between the offender and the victim to pursue reconciliation. In this context, the general grounds for the elimination of criminal liability can be divided into two types: justifying reasons, which relate to the act itself, and excusing reasons, which relate to the mental state of the individual or the perpetrator.[8]

Based on these considerations, the Asahan District Attorney's Office, as the object of this research, possesses unique characteristics worthy of examination. The region experiences a relatively high level of community mobility, which increases the potential for traffic accidents. Additionally, the heterogeneous social conditions of the community influence the patterns of case resolution.

The urgency of this research is also grounded in the need to improve the quality of law enforcement. The criminal justice system has often been perceived as inadequate in delivering a sense of justice, particularly for victims who feel that they have not received sufficient restoration. Restorative justice offers an approach that is more oriented toward the needs of victims. Moreover, this approach can enhance public trust in law enforcement institutions. Through restorative resolution, it is expected that the public will perceive the law as a means of achieving justice rather than merely a tool of punishment.

Research on the effectiveness of restorative justice also provides academic contributions, given the limited number of empirical studies addressing its implementation at the regional level. Most existing studies remain normative and theoretical in nature. Therefore, this research can offer a more realistic depiction of actual conditions. Furthermore, it can serve as a reference for other researchers interested in similar topics, highlighting the importance of developing legal scholarship based on social realities.

In addition to its academic contributions, this research also has practical implications for law enforcement institutions. The findings can be used as an evaluative tool in the implementation of restorative justice. Furthermore, this study may provide recommendations for policy improvements, which are essential for enhancing the effectiveness of law enforcement.

Research Methodology Type of Research

This study employs a normative juridical legal research method with conceptual and statutory approaches. The normative juridical approach is chosen because the research focuses on analyzing legal norms governing the effectiveness of the implementation of restorative justice by the Asahan District Attorney's Office in resolving traffic cases resulting in fatalities. In addition, a conceptual approach is used to examine the principles of restorative justice in relation to the protection of victims' rights, the interests of offenders, and the public's sense of justice.

The legal materials used include primary legal materials in the form of relevant statutory regulations, such as the Criminal Procedure Code, prosecutorial regulations concerning the termination of prosecution based on restorative justice, and other related legal provisions. Secondary legal materials, including academic literature, journals, and opinions of legal scholars, are utilized to strengthen the analysis of the concept and implementation of restorative justice. This research is also supported by tertiary legal materials such as legal dictionaries and encyclopedias to clarify the terminology used.[9]

Data Analysis

Data analysis in this study is conducted qualitatively using a descriptive-analytical method. Data obtained from primary and secondary legal materials are analyzed by interpreting legal norms and relating them to the theory of restorative justice and its application within the criminal justice system.[10]

The analytical process is carried out through several stages, namely the inventory of legal materials, classification based on relevance to the research problems, and legal interpretation using grammatical, systematic, and teleological methods. Subsequently, conclusions are drawn deductively, moving from general provisions toward a specific analysis of the effectiveness of implementing prosecution termination based on restorative justice.

This analysis also considers the balance between the protection of victims' rights, the interests of offenders, and societal perceptions of justice, thereby producing a comprehensive understanding of the effectiveness and challenges in implementing restorative justice in traffic accident cases.

Results The Effectiveness of the Implementation of Restorative Justice by the Asahan District Attorney's Office in Resolving Traffic Accident Cases Resulting in Fatalities

The implementation of restorative justice within the criminal justice system[11] represents an approach that emphasizes the restoration of relationships among the offender, the victim, and society. In cases of traffic accidents resulting in fatalities, this approach becomes particularly important due to the strong humanitarian dimension involved. The Asahan District Attorney's Office, as part of the law enforcement apparatus, plays a significant role in implementing this policy through the termination of prosecution based on restorative justice.

Based on the research findings, it is revealed that the Asahan District Attorney's Office has adopted a restorative justice policy by referring to the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation serves as the primary legal basis for implementing the termination of prosecution, taking into account specific requirements such as the existence of reconciliation between the offender and the victim, as well as the fulfillment of a sense of justice within society.

In practice, the application of restorative justice in traffic accident cases resulting in death cannot be carried out arbitrarily. The Asahan District Attorney's Office conducts a case selection process by considering factors such as the offender's degree of fault, the level of negligence, and whether there was any malicious intent. This is essential to ensure that restorative justice is not misused as a means of evading legal responsibility.

From the perspective of the offender's interests, the termination of prosecution based on restorative justice provides benefits such as avoiding lengthy judicial proceedings and the social stigma associated with being a criminal offender.[12] Additionally, offenders are given the opportunity to demonstrate moral and social responsibility through efforts to restore the harm suffered by the victim.

The effectiveness of restorative justice implementation is highly influenced by the existence of a peace agreement between the offender and the victim's family.[13] In several cases, the victim's family agrees to a peaceful settlement by considering humanitarian factors and the social relationship between the parties. Such agreements are typically formalized in written form and witnessed by law enforcement authorities.

Furthermore, the Asahan District Attorney's Office also acts as a facilitator in the mediation process between the offender and the victim. Prosecutors do not merely function as public prosecutors but also serve as mediators who strive to create constructive dialogue. This role reflects a transformation in the function of the prosecution service, shifting from a predominantly repressive approach to a more restorative one.

However, the effectiveness of restorative justice is not without challenges. One of the primary obstacles is the difference in perception between law enforcement officials and the public regarding the meaning of justice. A portion of society still believes that justice can only be achieved through punishment, which leads to resistance toward the restorative approach.

On the other hand, there are also regulatory constraints, particularly concerning the limitations of applying restorative justice to criminal offenses resulting in death. Although normatively permissible, in practice there remains hesitation in applying this policy to certain cases considered serious.

In practice, not all traffic accident cases can be resolved through restorative justice. Cases involving a high degree of fault or those that have a broad societal impact are generally still processed through formal criminal justice mechanisms. In addition, cultural factors[14] also influence the success of restorative justice implementation. In communities that highly value

familial relationships, peaceful settlement is more readily accepted compared to more individualistic societies.

Another factor affecting effectiveness is the competence of law enforcement officials in understanding and implementing the concept of restorative justice. A deep and comprehensive understanding is required to ensure that the restorative process operates optimally and does not give rise to new forms of injustice.

In this regard, the Asahan District Attorney's Office has undertaken various efforts to enhance human resource capacity through training and socialization programs. These efforts aim to ensure that prosecutors possess adequate capabilities in handling cases using a restorative approach. Moreover, community support is also a crucial factor in the successful implementation of restorative justice. Communities that understand this concept tend to be more receptive to peaceful dispute resolution, allowing the process to proceed smoothly.

The implementation of restorative justice provides significant benefits for both offenders and victims. For offenders, this approach offers an opportunity to rectify their wrongdoing without undergoing imprisonment. Meanwhile, for victims, restorative justice provides space to obtain meaningful recovery.

The Asahan District Attorney's Office must ensure that the restorative justice process is conducted transparently. Every decision to terminate prosecution must be based on objective and non-discriminatory considerations. From the perspective of criminal law,[15] restorative justice represents part of the evolution of a more modern penal paradigm. This approach no longer emphasizes retribution but instead focuses on recovery and reconciliation.

As reflected in a traffic accident case within the jurisdiction of the Asahan District Attorney's Office, the institution, acting as a facilitating prosecutor, carried out the process of terminating prosecution based on restorative justice against a suspect charged under Article 310 paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation. This was conducted based on a warrant to facilitate a restorative justice-based settlement, Number: Print-6210/L.2.23/Eku.2/10/2023 dated October 5, 2023, and supported by an integrity pact in relation to the termination of prosecution based on restorative justice.

In the process of terminating prosecution based on restorative justice, which was attended by the facilitating prosecutor, the victim's parents, the suspect, community leaders, and third parties, it was affirmed that:

1. The termination process was carried out in accordance with standard operating procedures (SOP) and applicable laws and regulations.
2. There were no vested interests in the handling of the case subject to termination based on restorative justice.
3. No practices of corruption, collusion, or nepotism were involved in the termination of prosecution based on restorative justice.

Based on the Legal Opinion Memorandum regarding efforts to resolve the case through restorative justice by the Asahan District Attorney's Office, in relation to the traffic accident case involving a suspect alleged to have violated Article 310 paragraph (4) of Law Number 22 of 2009, it was determined that the case met the requirements for resolution through restorative justice. This consideration was based on the fact that the suspect was a first-time offender and that the offense was punishable by a fine or imprisonment not exceeding five years. Based on these considerations, the Asahan District Attorney's Office concluded that the case should be resolved through restorative justice.

From the outcome of the reconciliation, which was formalized in a written peace agreement, both parties reached an amicable settlement. The agreement stipulated that Party I requested Party II to construct a charitable facility (amal jariyah) in memory of the victim, specifically by repairing a damaged bridge in Dusun 7, Pulo Bandring Village. This work has been completed by Party II at a cost of Rp. 18,000,000 (eighteen million rupiah). The parties also agreed not to pursue any future legal claims against each other. Furthermore, both parties

pledged to maintain a familial relationship, avoid any sense of resentment, and foster a spirit of togetherness in community life.

The effectiveness of the implementation of restorative justice can be seen from the level of success in resolving cases without going through trial proceedings. However, evaluation is necessary to ensure that such policies are not misused. This evaluation can be carried out through both internal and external supervision. In addition, harmonization between restorative justice policies and other statutory regulations is required to prevent normative conflicts. This is important to ensure legal certainty for all parties. In traffic accident cases resulting in death, the restorative approach must be applied with great caution due to the significant impact on victims and their families.

The effectiveness of restorative justice implementation is not only measured by the number of cases resolved, but also by the quality of the outcomes achieved. This includes the level of victim satisfaction, the offender's accountability, and the resulting social impact. The success of restorative justice largely depends on the ability of law enforcement officials to manage conflict. This indicates that restorative justice is not merely a matter of policy, but also of practical implementation in the field.

One of the factors influencing the effectiveness of restorative justice is the level of public understanding of the concept. Many people still perceive that justice can only be achieved through punishment.[16] This perception poses a challenge to the implementation of restorative justice. A cultural approach needs to be considered in the case resolution process. Local values such as deliberation and familial ties are *למעשה* aligned with the concept of restorative justice. By utilizing these values, the application of restorative justice can be more readily accepted by society.

From a criminal law perspective, restorative justice also faces challenges from a normative standpoint. Not all criminal offenses can be resolved through a restorative approach, particularly those involving broader public interests. Nevertheless, in cases of traffic accidents caused by negligence, restorative justice has room for application, as such offenses do not always involve malicious intent. Moreover, restorative justice can reduce the social stigma attached to offenders and provides benefits not only to victims but also to offenders and society at large.

Restorative justice is also in line with the values of Pancasila as the foundation of the state. The principles of social justice and just and civilized humanity are reflected in the restorative approach. Its implementation is grounded not only in legal principles but also in philosophical values, demonstrating its compatibility with the character of the Indonesian nation. By prioritizing deliberation and consensus, restorative justice can strengthen social relationships and help prevent prolonged conflicts.

In this regard, the Asahan District Attorney's Office has demonstrated a commitment to implementing restorative justice in a selective and responsible manner. This is reflected in the procedures followed in each decision-making process. The application of restorative justice by the Asahan District Attorney's Office has been fairly effective in resolving traffic accident cases resulting in fatalities, although there remain several challenges that need to be addressed.

Conclusion

The implementation of restorative justice by the Asahan District Attorney's Office in resolving traffic accident cases resulting in fatalities reflects a paradigm shift within the criminal justice system toward a more recovery-oriented approach. Restorative justice no longer focuses solely on punishment but emphasizes efforts to repair relationships between the offender, the victim, and society through fair and balanced reconciliation mechanisms.

The effectiveness of this implementation is influenced by several key factors, including the existence of a peace agreement between the offender and the victim's family, the active role

of prosecutors as facilitators in the mediation process, and community support for resolving cases outside formal court proceedings. In practice, the Asahan District Attorney's Office has carried out the termination of prosecution selectively by considering legal aspects, the degree of the offender's fault, and the prevailing sense of justice within society. This demonstrates that the application of restorative justice is not conducted arbitrarily, but rather through a measured and accountable mechanism.

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