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## **Law Enforcement against Crime Traffic Accidents The Causes of Death through Restorative Justice Approaches**

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### ***Abstract:***

*Law enforcement has always involves the people in it and also involve human behavior. The law can not be upright by itself means that the law is not able to realize its own promises and the will of those listed in the regulations of law. Law enforcement in Indonesia must comply with the public sense of justice with regard to legal certainty in each individual. The application of restorative justice as a form of resolving cases of traffic accidents have a significant role to meet the interests of the victim and the perpetrator, because the purpose of restorative justice is to restore the relationship between the offender, victim and community. In its application the cause of death would set the perpetrator and the victim to the position of mutually beneficial and rewarding for both. The role of law enforcement officers are substantially reduced in monopolizing the process of resolving cases of traffic accidents. Restorative justice requires the cooperative efforts of the community and the government to create an environment where victims and perpetrators can reconcile their conflicts and improve their old wounds.*

***Keywords:*** Law enforcement, crime of traffic accidents, restorative justice approaches

### **1. Introduction**

Driving by car or by motorcycle in large cities that have traffic super busy traffic of course is not easy and comfortable. Besides bothered by congestion that is increasingly becoming so, often also treated with most riders action "iron horse" who still have high levels of driving safety awareness is low. This effect adds to a factor other than traffic accidents, also will bring a domino effect which is increasingly regarded as a habit of daily traffic. In fact, not infrequently make become uncomfortable when driving on the highway.

Loss of convenience in the world of transportation was no doubt often cause emotions to each rider. So that sometimes can be seen as well as those on the highway vent emotions casually, shouting and even fist fights due to easy emotion arises because of the traffic alone. Sometimes also like emotion with everything that happens on the road that are harmful to others. Starting from the vehicle that was in front of us who swerves abruptly until there rider who broke traffic lights enormous risks.

But it's all true danger can be reduced in the presence of our awareness of the concept of safety riding. Instead the concept of this one must be studied and digested carefully, because basically this concept is not just talking about driving safety course, but ethics drive can also be formed when realizing the importance of safety riding. The concept of safety riding is a concept or way of driving that can provide security and comfort for the rider and to the other riders. Safety riding itself also consist of non-technical factors and technical factors in road traffic, which technically includes the drive gear to the completeness of a motor vehicle. While non-technical factors can a human factor which is on each individual rider. In terms of traffic ethics needs to be recognized as an effort to protect road users and motorcyclists itself, so it's too naive if not ignored. And for that should be developed and built public awareness of the culture of orderly traffic. Criminal laws governing acts prohibited by law and result in the application of penalties for those who do it and satisfy the elements of acts mentioned in the criminal laws. the purpose of criminal law is to scare people from doing bad deeds and educate someone who had done bad deeds into good and acceptable.

Criminal law is always associated with the two types of acts are crimes and violations. Crime is the act that is not only contrary to the law but also contrary to the moral values, religious values and sense of justice, for example, stealing, murder, adultery, rape, and so while the offense is conduct which is only prohibited by law such as not wearing helmets, not using a seat belt in the drive and so on. violation to the rules of criminal law can be immediately taken action by law enforcement agencies without any complaint or report of the injured party, except offenses including complaint-based offense such as rape, domestic violence, and theft by the family while the defendant penalty that proved his guilt can be sentenced to death / in prison / jail or fines could also be sentenced to additional such deprived of certain rights. But often in the completion of a traffic violation case is not in accordance with the provisions of applicable law. Many cases of traffic violations resolved on the spot by law enforcement officers. In other words, no matter the offense to be processed according to law.

In criminal law applies the principle that a person should not be considered guilty before the verdict came. The person who has committed a crime is not in itself give himself to be processed through the existing justice system. There must be a public body and it started in the first place by the police that the detention and investigation. Police are criminal law who live or spearhead of criminal law enforcement.

## 2. Factors Causing Traffic Violations

In the current era of globalization people are required to have high mobility, particularly in urban areas where people every day are always traveling from one place to another to meet their needs. Most people use a landline (highway) to make mobility because the highway is a cheap transportation path than the path of water and air transportation.

But the development of traffic, ranging from increased vehicle users which resulted in the increasing number of vehicles which make less congestion, public transport between and within the city to progress road users and traffic. Traffic is one of the important factors that support the advancement of a city, because with the traffic, then any activity that would be done would run smoothly. An increase in the number of motorcycles from year to year continues to increase so that it affects the lives of traffic and cause several problems, among others, frequent accidents due to traffic violations. This can happen due to negligence of the driver's vehicle which does not comply with the traffic rules that already exist for the safety, smoothness, and traffic safety.

Causes of low awareness will comply with the traffic rules are:

- a. The lack of knowledge of traffic signs, not all vehicle drivers to understand and know the traffic regulations. Meaning and markings and traffic signs have not been fully understood by the driver on the highway. The cause is the lack of awareness to find out the meaning and markings and traffic signs at the time of the exam plus a driver's license, they prefer to get a driver's license with an instant rather than follow the entire procedure. Inevitably though many drivers already have a driver's license but is still often a foul on the highway.
- b. Only obedient when there are officers. It is also the custom of most people of Indonesia. Example of a driver will not be breaking traffic when there are police who are setting up the flow of traffic at an intersection or a police officer on duty at the post near the intersection mentioned. But if there is no police he could immediately step on the gas.
- c. Turn rotate phrase. Often hear "rules are made to be broken". It is very misleading, but somehow this expression is very attached to the minds of people of Indonesia, so some many who are eager to implement it. So do not be surprised if many riders vehicles on the highway commit traffic violations, when the offense is actually harmful to themselves and other motorists.
- d. Do not think about the safety of self or others. The Government has required several safety standards such vehicle driver while driving must install safety belt for the driver's four wheels and the compulsory wearing of helmets, the mirror stays attached and turned on the lights during the day for two wheels. But there are still many drivers lazy apply, the reason is very simple, many motorists on the road which was not too concerned about safety themselves or others.
- e. Could "peace" when ticketed. This is the most common. When the drivers violated the rules or incomplete completeness of the letters while in the raid, the first filed by the driver is the "peaceful". If it can not be peace in the street, peacefully certainly could try again later before the court in order to get back the letters are arrested by the police immediately.

Besides lack of awareness level knowledge will adhere traffic regulations. Traffic violations also can be caused by many factors, both internal factors and external factors motorized users of consciousness. Internal factors include human factors while external factors are factors vehicles, road factors and weather factors. Besides almost daily violations of traffic law enforcement as a result of factors that are less applied in traffic.

## 3. Factors Causing Traffic Violations Are

- a. Factors law enforcement. Law enforcement, namely the parties involved in the field of law enforcement. The mentality of law enforcement is the central point than the law enforcement process. this is caused by the people of Indonesia there are still a strong tendency to always identify with the law enforcers. When enforcers good mentality, then the implementation of the law itself is also good. If law enforcement is not preferred, it is not necessarily applicable law is also considered bad. Law enforcement is a role model in the community groups who should have certain abilities in accordance with the aspirations of the people. They must be able to communicate and gain understanding of target groups, in addition to capable bring or carry out the role that can be accepted by them. Peer group also should be able to choose time, the right environment in introducing norms or rules of the new law, as well as provide exemplary good.
- b. Factor means or facilities. Means or facilities include educated manpower and skilled, good organization, adequate equipment, and sufficient financial. Without the means or facilities, it is unlikely that law enforcement will take place smoothly. Facilities and infrastructure have a huge influence for the smooth implementation of the rule of law is very easy to understand, and a lot of examples in society. For example the Act No. 22 of 2009 Paragraph 9 of Procedures for Traffic Passes General Motor Vehicle Drivers Article 126 every person driving the motor vehicle public transport stops are prohibited other than in the designated place, but the reality on the road, the number of stops provided very limited, giving rise to violations of the law.
- c. Community factors. Factors that may affect the security and traffic order is public awareness of traffic rules and the interests of different humans. This led to humans tend to be careless and negligent. Even intent becomes the dominant factor of traffic violations. The higher public awareness of the law it is increasingly allow for law enforcement in the community. Because

the law is derived from the people and is destined achieve peace in the community as well. Therefore be regarded from a certain angle, the community may affect the enforcement of the law.

Law enforcement is actually closely related to obedience to the users and implementers of legislation. This community factors play a pivotal role. It is closely related to the level of legal awareness and legal compliance community. Legal awareness is a process which includes elements of legal knowledge, understanding of the law, legal attitudes and behavior of law. Indonesian society have the opinions of the laws that greatly affect the compliance of the many legal and public understanding of the law, many who identify with the officer (in this case law enforcement). One result is that the merits of the law is always associated with the law enforcement behavior patterns. Actually, this is a wrong perception in the community. Communities should raise awareness to obey the laws of his own. To the discipline of the public to obey the law needs to be improved. Society must be able to comply with the law because the law also serves to regulate their interests.

#### **4. Efforts Combating Traffic Violations**

The central issue traffic violation is actually located on the factors that may affect it. These factors have a neutral meaning, so that a positive or negative impact lies in the content of these factors. Someone who violate traffic rules is not a criminal. A driver who violates traffic rules is someone who is negligent in limiting abuse of their rights. Installation of the right to have their signs that the driver in front of him there is a dangerous bend will be able to prevent accidents.

For that to overcome by carrying out their duties with emphasis on preventive measures or a preventive and repressive measures or take action by reviewing an event that occurs in accordance with the provisions laid down by law. Besides the police should also conduct routine patrols and routine operations. If the operation and routine patrols less than the maximum then the party held a special traffic operation. This special operation to conduct raids motor vehicles, both razian completeness of motor vehicles and motor vehicle raid completeness letters. Reduction efforts traffic violations committed by the police that preventive measures and repressive efforts.

##### *4.1. Preventive Efforts*

As for preventive measures carried out by the Traffic to prevent traffic violations, namely:

- a. Traffic arrangements are defined as notice to road users. How and where they can be or not to move or stop, especially at times of congestion and emergencies. In a broad sense traffic regulation covers all the activities of the police in regulating traffic on public roads.
- b. Secure traffic is a traffic monitoring activities in certain places are held as needed primarily prevention, protection service to road users, when finding traffic violations and traffic accidents immediately take appropriate action repressive applicable procedures.
- c. Socialization or campaigns to comply with traffic regulations by installing banners and socialization to schools.
- d. Community policing or community policing is a process education at community level in order to establish a culture of traffic rules.
- e. Increasing the number of police stations means somewhat vulnerable to violations of road markings.
- f. Increased traffic engineering viable form of improvement or refinement of road markings or traffic signs and traffic control systems are expected to reduce the occurrence of violations of road markings also prevent traffic accidents.
- g. Improve regulatory activities, guard, escort patrols, especially in areas prone to violations and accident-prone.
- h. Traffic Unit also provides legal action in the form of granting him a ticket to road users who commit traffic offenses, sentencing is expected to give deterrent effect to offenders so that in the future people will think to not commit a traffic violation back.

##### *4.2. Repressive Efforts*

The activities traffic unit in tackling traffic offenses by means of repression is as follows:

- a. Ticketed. Speeding ticket is proof of infringement. Ticketed function itself as an invitation to the traffic violator to attend a hearing in court, as well as proof of forfeiture of items seized by the police from the offender.
- b. Foreclosure. Doing the foreclosure because the rider vehicle does not carry or have no papers completeness motor vehicle and driving licenses.
- c. Reprimand. Reprimand made to the motor vehicle driver who commits an offense, but promised not to commit another offense. Done by making a written statement that it will not commit an offense. This effort is expected to solve the problems and also bring a sense of peace in society, although in such a case is basically unable to eliminate violations directly but may give a warning against those who have committed violations by the public or the victim. This activity is also an embodiment of the process and Traffic Unit to the public as an attempt to implement a function of traffic police in which those activities should be fostered in a mutually supportive togetherness. With the efforts aimed at what is expected to be achieved in accordance with the purpose of Traffic Police in particular. The goal is to restore balance in the community who have been disturbed by the number of violations.

#### **5. Application of Restorative Justice in Traffic Accident Settlement**

The application of restorative justice in cases of traffic accidents that cause the death of more prominent when application attempts to put forward the interests of the perpetrator than the victim's interests. Public perception make efforts restorative justice in cases of traffic accidents to be biased, giving rise to the pros and cons in the community, some have argued that the punishment of the

perpetrator has fulfilled a sense of justice because of the loss of life caused by the traffic accident, but on the side Other actors perceive punishment with imprisonment is considered burdensome because of the element of accident causes an accidental act or omission alone.

The trial of the case of traffic accidents is Interrogation fast. In the process the defendant by infringing placed in a room and then the judge will call the name of the accused one by one to read the fine. After the judge read out fines will gavel as a token release of a decision. Ticketed according to the explanation of Article 211 of Law No. 8 of 1981 on the Criminal Code is intended as proof that a person has committed violations of road traffic.

In this context through traffic management and traffic engineering government actually has the objective to realize the traffic and road transport that is safe, secure, fast, smooth, orderly and organized, comfortable and efficient. The procedure for traffic on the road was governed by the laws and regulations concerning the direction of traffic, priority use of road, traffic lanes, traffic lanes and control the flow at the intersection.

At least three important components which are held together in traffic which is as follows:

- a. Humans as users, people as users can act as a driver or pedestrian that under normal circumstances has the capability and preparedness of different (reaction time, concentration). The differences are still influenced by the physical and psychological state, age and gender and external influences such as weather, lighting or street lighting and layout of the room.
- b. Vehicles, vehicle in question is a vehicle used by the driver on the highway. This vehicle has the characteristics associated with speed, acceleration, deceleration, dimensions and cargo traffic requires sufficient space to be able to maneuver in traffic.
- c. Street. The definition of road is planned to pass the track motor vehicles and motor vehicle not including pedestrians. The road is planned to be able to stream traffic flows smoothly and is able to support the payload and safe vehicle axis, so as to dampen the number of traffic accidents.

Application of the value of justice is met if the implementation of restorative justice be applied in resolving cases of traffic accidents, because restorative justice is an alternative paradigm for justice as opposed to the traditional values and procedures of the system of traditional criminal system, as it is still used in Indonesia. However, the existing paradigm in some communities in Indonesia, including law enforcement officers is a formal, legalistic paradigm are glued to the laws textually, so that the application of restorative justice efforts have big obstacles in its implementation especially in cases of traffic accidents resulting in death will be very disturbing sight public when the perpetrators are not punished in accordance their action. As part of efforts to resolve the case of traffic accidents the application of restorative justice is set aside legal issues that create conflict.

Restorative justice is more emphasis on the protection of victims of crime, victims recover losses and to harmonize the relationship between the perpetrator and the victim of crime. The restorative justice is deemed a criminal offense is not a crime against the state or the public, but a crime against the victim so that the solution put emphasis on the recovery of victims rather than to punish the perpetrator, whereas in the implementation of our criminal justice system is focused on the application of the "restitutive justice" and "retributive justice "focusing on the perpetrators, how to prove his guilt and punish him, this is precisely what many affect law enforcement officers in their duties that matter who is at fault should be punished in accordance with applicable regulations.

However, the practice of application of restorative justice in the case of traffic accidents that cause death also raises concerns among others feared the rise of arbitrariness offender because it considers capable of providing redress so that in the future can repeat it back and have no deterrent effect, on the other hand concerns arises is if indeed the peace that happened before the judicial process if it is possible there will be no prosecution back to the perpetrator, so that the value of legal certainty is not found. Therefore, there will always be conflict in the application of restorative justice in cases of traffic accidents.

## **6. Application of Restorative Justice Opposition in the Settlement of Traffic Accidents Cause of Death**

The role of restorative justice as a form of resolving cases of traffic accidents have a significant role to meet the interests of the victim and the perpetrator, because the purpose of restorative justice is to restore the relationship between the offender, victim and community, as stated Liebmann: "Restorative justice aims to restore the well- being of victims, offenders and communities damaged by crime, and to Prevent further offending ".

If seen from the characteristics of restorative justice it will be a lot of positive things that can digalii by both parties, because the mission contained on restorative justice which search solution (finding a solution), repair (repairing), reconciliation (peace), and the rebuilding of relationships (building back relationship) so that its application in the case of traffic accidents that cause the death of seats the perpetrator and the victim to the position of mutually beneficial and rewarding for both.

Restorative justice puts a higher value on the direct involvement of the parties, accident victims, offenders, communities and enforcement law. Victims will be able to restore control elements while offenders are encouraged to take responsibility as a step in correcting errors caused by crime and in building social value system. Community involvement is actively strengthening the community itself and bind a community of values for mutual respect and love between the members. The role of law enforcement officers in substance reduced in monopolizing the process of resolving cases of traffic accidents.

High incidence of traffic accidents that cause deaths in each year showed that the potential to eliminate altogether the number of accidents is something that is impossible in this country. Significant growth vehicle was compared with the available load into things that can not be denied, especially in big cities in Indonesia. Good traffic awareness and availability of adequate road also had a hand in influencing the number of accidents, will be based on these conditions, if the number of traffic accidents is high would be directly proportional to the handling of traffic accidents to be resolved through the existing criminal proceedings, of course it is also directly proportional to the load of cases that go to trial and will lead to the number of inmates who will inhabit the correctional institution.

If looked at formally positivistic any form of violation of the legislation would lead to imprisonment, whereas the purpose of punishment is not merely punish the perpetrators by depriving liberty through imprisonment, such as what is proposed by Barda Nawawi Arief, with regard to the types of criminal sanctions criminal deprivation of liberty in the form of imprisonment for a criminal types that are often imposed on the offender by the judge. In his travels in connection with the development objectives of punishment which is no longer only focused on efforts to give pain, but has led to the remediation efforts towards a more humane, the imprisonment of many drawing criticism from many parties, especially the issue of effectiveness and their negative impacts the application of such imprisonment.

Therefore, in accordance with the views Muladi need for efforts to seek alternatives to punishment as it is quoted that "criminal problem there is a problem that today is universally continue to be resolved". The problem is the existence of community dissatisfaction with crimina deprivation of liberty, which in various research proved highly detrimental both to individuals who are subject to criminal, as well as on society. In various countries, including Indonesia, continued efforts are made to seek alternatives of criminal deprivation of liberty, among others, by increasing criminalization of a non institutional .....

According to Barda Nawawi Arief, from the standpoint of normative dogmatic, the underlying problems in the criminal law is:

- a. What actions should be convicted, or commonly abbreviated with the problem of "criminal offense"
- b. What terms should be met to blame / account someone has done it, or commonly abbreviated with the problem of "error"
- c. Sanctions (criminal) what should be charged to the person suspected of committing a criminal act or commonly called the problem of "criminal",

Indeed, the normative handling traffic accidents has specific rules as lex specialist of the Criminal Code, which is regulated in Law Number 22 Year 2009 regarding Traffic and Road Transportation (hereinafter referred to as Law LLAJ). A traffic accident in essence is an act of unexpected or unintended happen otherwise known as "culpa" or "negligent / neglect" so that the factor causing the loss of life is not merely the will of the victim, but on the basis of an accident, unless the accident induced provable as a deliberate action which means it can be classified as an act of murder.

Barda Nawawi Arief also argued about criminal purposes, namely: "Based on the idea, that the criminal was essentially just a means to an end, then the first to formulate the concept of the purpose of punishment starts from the balance of 2 (two) main targets, namely the" protection of the public "and" protection / individual coaching criminal. In addressing the crimes that are considered to be restored back, known as a so-called punishment paradigm of restorative justice, where offenders are encouraged to repair the damage that has been caused to the victims, their families and communities. So that imprisonment is not the best solution in finishing cases of traffic accidents due to "damage" caused to victims could still be restored so that the spirit to seek the recovery while also ensuring continuity of future families will be reached at the same time caused the removal of adverse effects of imprisonment for offenders.

Barda Nawawi Arief, consider that imprisonment is currently experiencing a period of crisis, because including one type of criminal that "less favored" so many sharp criticism directed against this type of criminal deprivation of liberty, good views of the consequences other negative accompanying or related to lay his hands on a person's independence. So that in practice a lot of settlement of traffic accidents that cause death completed the restorative justice approach, encouragement of the perpetrator to the victim to make peace with the apology, provide compensation, provide compensation for the families, considered as a form of implementation of restorative justice.

The facts show that in general, restorative justice is understood and identified with the settlement out of court which can only be applied in certain cases such as minor criminal and juvenile justice. Another fact is that although it is popular in almost all countries, including Indonesia, but in fact only a few countries formulate comprehensive manner in their national criminal justice system. Thus boost the criminal issues continue to be used as an alternative to prison discourse in each country as what the Barda Nawawi Arief: "Highlights and sharp criticism of the imprisonment was not only expressed by the experts as individuals, but also by the community of nations in world through several International Congress. In the fifth United Nations Congress 1975 in Geneva on the Prevention of Crime and the Treatment of Offenders, among others, that in many countries there is a crisis of confidence in the effectiveness of imprisonment and there is a tendency to ignore the ability of penal institutions in supporting the effort to control crime.

The concept of restorative justice theory offers answers to important issues in the settlement of criminal cases, the first, criticism of the criminal justice system that does not provide an opportunity especially for victims (criminal justice system that disempowers people); second, to eliminate conflicts especially between the perpetrator to the victim and the community (taking away the conflict from them); Third, the fact that the feeling of helplessness is experienced as a result of a criminal act must be addressed to achieve an improvement (in order to Achieve reparation).

On the basis of the application of restorative justice in resolving cases of traffic accidents that cause death, especially the level of needs and interests that are important both for the offender and for the victim and the community. Formulation of restorative justice arrangements would provide legal certainty for the parties, the same as the criminal system of the child stipulated in Law No. 11 of 2012 on the Criminal Justice System Child which explicitly include the concept of restorative justice and diversion to the settlement of cases involving child offenders ,

## 7. Conclusion

The role of restorative justice as a form of resolving cases of traffic accidents have a significant role to meet the interests of the victim and the perpetrator, because the purpose of restorative justice is to restore the relationship between the offender, victim and community. The emergence of opposition to the application of restorative justice is bound to be encountered because of the level of implementation would be contrary to, among others, First Instance contradict existing criminal system since the criminal system for resolving cases of traffic accidents that cause death based on the Law on Traffic and Road Transport, and Restorative Justice is not the

mechanism set out in the law, Second, contrary to the interests of the offender and the victim, the perpetrator and the victim that each have different interests, efforts to accommodate these two interests also cause problems, given the nature of benchmarks are used namely very subjective depend on the needs of each party so that conflict will occur when the intersection between the interests of the parties is not reached, The Third, the opposition to the values of legal certainty, the absence of formal legal protection against the application of restorative justice in cases of traffic accidents that cause death, so that the efforts of restorative justice will not have the value of legal certainty, if there is legal certainty will depend once to law enforcement officials in accordance with its authority, this is what causes the conflict of application of restorative justice itself

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