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## **BALTIC JOURNAL OF LAW & POLITICS**

A Journal of Vytautas Magnus University  
VOLUME 15, NUMBER 3 (2022)  
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:3 (2022): 216-227  
DOI: 10.2478/bjlp-2022-002017

### **The Urgency of Restorative Justice Policy in Resolving Traffic Crime in Indonesia**

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Received: August 23, 2022; reviews: 2; accepted: November 19, 2022.

#### **Abstract**

The principle of opportunity, public prosecutors have been entitled to the authority to proceed or terminate the criminal cases under their authority. However, the termination of prosecution by the attorney generals is mostly not followed by a victim-oriented settlement. In this case, the principle of opportunity is not in line with the victim interest. On the other hand, the direction of legal reform in Indonesia promotes restorative justice approach in every criminal case settlement. In this regard, this article aims to investigate the way to implement restorative justice in case terminations by General Attorney of Indonesia. This research relies on socio-legal approach. Data were collected through the investigation of regulations and works of literature related to the termination of prosecution of criminal cases and restorative justice. The result of this study indicates that the regulation concerning termination of prosecution based on restorative justice is obviously departed from the public needs. According to General Attorney Regulation, restorative justice which is oriented to the public interest has the chance to be implemented as the basis for termination of prosecution of criminal cases; therefore, the penal court can be addressed as the last option (*ultimum remidium*).

#### **Keywords**

Restorative; Justice; Indonesia.

#### **Introduction**

Traffic crimes and violations are daily occurrences with which the community

must contend, as people use the roadway daily for their purposes. The highway has become a basic need for the community, and in order for it to function properly as a basic need, it is vital to have regulations addressing its usage and the safety of its users.<sup>1</sup>

Recent developments in Indonesia, particularly in major cities, demonstrate how rapidly the sphere of motorization is expanding. One of them is by rapidly and disproportionately increasing the number of motorized vehicles by expanding the roadway and improving the facilities and infrastructure that produce traffic difficulties such as traffic congestion, violations, and traffic accidents. The Central Statistics Agency (BPS) recorded an annual increase of 9.05 percent in motor vehicle ownership from 2009 to 2018. The high ownership of immobile motorized vehicles with road construction sections is shown in the 1.45% yearly road growth rate reported in Indonesia from 2009 to 2018.<sup>2</sup>

Roads have a significant role in human existence because all human activities nowadays are dependent on road transportation. Therefore, the parties responsible for the safety of the use of the roadway should apply the regulations that have been prepared and implemented in order to reduce traffic accidents as much as feasible. However, in actuality there are still numerous challenging and insurmountable obstacles on the route.<sup>3</sup>

Both the quality and quantity of recent traffic accident cases are quite worrisome. Frequently, road accidents inflict not only moderate or severe injuries, but also a number of fatalities. Despite a 10.06 percent decline in the number of traffic accidents in the 31st week of 2020 compared to the previous week, the National Police Traffic Corps documented 974 cases with 189 fatalities and injuries. There were 142 serious injuries and 1170 minor injuries, with property damage totaling 1,675,500,000 rupiah. During the 30th week, there were 1,083 occurrences of road accidents, including 200 fatalities, 135 serious injuries, and 139 minor injuries, with total material losses of 1,958,801,700 rupiah.<sup>4</sup>

The majority of road collisions are the result of human error and irresponsibility. The main reason of the traffic collision is the driver's/disobedience rider's to traffic rules, in addition to the driver's/terrible rider's personal character, such as wanting to win on their own, not caring about others, and making other people's lives more difficult as a result. Profit as much as possible at the expense

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<sup>1</sup> Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66-77 <<https://doi.org/10.53955/jhcls.v2i1.31>>.

<sup>2</sup> Aristo Marisi Adiputra Pangaribuan and Kelly Manthovani, 'Causes and Consequences of the War on Marijuana in Indonesia', *Indonesia Law Review*, 9.2 (2019) <<https://doi.org/10.15742/ilrev.v9n2.502>>.

<sup>3</sup> Julia Nakamura, Ratana Chuenpagdee, and Mostafa El Halimi, 'Unpacking Legal and Policy Frameworks: A Step Ahead for Implementing the Small-Scale Fisheries Guidelines', *Marine Policy*, 129 (2021), 104568 <<https://doi.org/10.1016/j.marpol.2021.104568>>.

<sup>4</sup> Holly E. Erskine and others, 'Measuring the Prevalence of Mental Disorders in Adolescents in Kenya, Indonesia, and Vietnam: Study Protocol for the National Adolescent Mental Health Surveys', *Journal of Adolescent Health*, 2021, 1-8 <<https://doi.org/10.1016/j.jadohealth.2021.05.012>>.

of others.<sup>5</sup>

One of the functions of law is to effect social change; this function implies that the law generates social patterns. Obviously, these patterns must be able to assist the establishment of a condition that sustains the development of numerous sectors. In every legal state, violators of the rule of law are held accountable for their actions, and a legal action can be punished if it contains the components of error that have been outlined in the Act.<sup>6</sup> Regarding Indonesia's legal system, it is currently deemed to fall short of people's expectations. Numerous critiques have been leveled against the Indonesian legal system, frequently leading justice-seekers to take action against it. This is acceptable since the community expects the judiciary to administer appropriate and suitable justice.<sup>7</sup>

Justice cannot be attained if legal certainty is met, because certain legal topics can be penalized without first determining whether the act is regarded a violation or a crime, which is an offense. The relationship between the value of justice and legal certainty is extremely tight, specifically, providing effective protection for each individual's rights when this is carried out in line with the most equitable approach.<sup>8</sup> Typically, the application of retributive justice is emphasized in Indonesian criminal law settlements. This approach to retributive justice should be replaced by restorative justice, which focuses on resolving problems/conflicts and restoring social harmony.<sup>9</sup>

### Research Method

This study is a normative legal study. Normative legal study is frequently referred to as doctrinal legal research, i.e., research that studies laws framed as norms or statutory rules according to positivism's philosophy.<sup>10</sup> The objective of the case method is to examine the practical application of legal norms or principles. Specifically with regard to decided cases, as evidenced by the jurisprudence of cases that are the subject of study. Practitioners employ the case method to conduct research by locating court decisions that meet the requisite jurisprudential

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<sup>5</sup> Sunny Ummul Firdaus, 'The Urgency of Legal Regulations Existence in Case of COVID-19 Vaccination Refusal in Indonesia', *Journal of Forensic and Legal Medicine*, 91. October 2021 (2022), 102401 <<https://doi.org/10.1016/j.jflm.2022.102401>>.

<sup>6</sup> Sandra Dewi Arifiani and others, 'Assessing Large-Scale Violence against Children Surveys in Selected Southeast Asian Countries: A Scoping Review', *Child Abuse and Neglect*, 93. December 2018 (2019), 149–61 <<https://doi.org/10.1016/j.chiabu.2019.05.005>>.

<sup>7</sup> Márcia R.O. Pedroso and Franciéle M.C. Leite, 'Physical Violence against Children in Espírito Santo, Brazil: Prevalence and Associated Factors', *Jornal de Pediatria*, 000.xxx (2022) <<https://doi.org/10.1016/j.jpmed.2022.07.009>>.

<sup>8</sup> Elisa Simó-Soler and Eloy Peña-Asensio, 'From Impact Refugees to Deterritorialized States: Foresighting Extreme Legal-Policy Cases in Asteroid Impact Scenarios', *Acta Astronautica*, 192. December 2021 (2022), 402–8 <<https://doi.org/10.1016/j.actaastro.2021.12.015>>.

<sup>9</sup> Ben Mathews, 'A Taxonomy of Duties to Report Child Sexual Abuse: Legal Developments Offer New Ways to Facilitate Disclosure', *Child Abuse and Neglect*, 88. December 2018 (2019), 337–47 <<https://doi.org/10.1016/j.chiabu.2018.12.003>>.

<sup>10</sup> Ansie Fouché, Daniël F. Fouché, and Linda C. Theron, 'Child Protection and Resilience in the Face of COVID-19 in South Africa: A Rapid Review of C-19 Legislation', *Child Abuse and Neglect*, 110. August (2020) <<https://doi.org/10.1016/j.chiabu.2020.104710>>.

qualifications for application in specific circumstances.<sup>11</sup> The author of this study drew legal information from two sources. In this study, qualitative methodologies are used to analyze legal documents. The normative-qualitative method was employed by the author to analyze the legal documents used in this study.<sup>12</sup>

## Results and Discussion

Implementing restorative justice as an attempt to resolve conflicts peacefully outside of court remains challenging. In Indonesia, there are numerous customary rules that can serve as restorative justice, but their presence is neither acknowledged by the government nor codified into national law. Conflicts that emerge in the society can be resolved by customary law to the parties' satisfaction. Emergence of the concept of restorative justice as a critique of the criminal justice system's use of imprisonment, which is deemed inefficient in resolving social problems.<sup>13</sup>

The reason for this is that the conflicting parties are not involved in its resolution. Victims are remain victims, incarcerated perpetrators create fresh issues for their families, etc. According to Detlev Frehsee, the growing use of restitution in criminal cases demonstrates that the distinction between criminal and civil law is diminishing and becoming problematic.<sup>14</sup>

The concept of restorative justice does not imply the abolition of incarceration; in cases involving large losses and the value of a person's life, imprisonment can still be employed. Restorative justice is a concept that can serve as an accelerator of basic, quick, and inexpensive judicial principles to secure legal certainty and public fairness. In the practice of the justice system in Indonesia, the concept of the goal of punishment is evolving, beginning with vengeance, which is a form of pure revenge against a criminal, without further consideration of the impact and advantages.<sup>15</sup>

The concept of restraint tries to exclude (alienate) criminals from people's life in order to keep them safe, tranquil, and free from fear of similar crimes. There is also the concept of individual deterrence and general deterrence, which is designed to make the criminal feel deterred (individual deterrence) or to serve as an example for the society to refrain from committing similar crimes (general deterrence) (general deterrence) The second innovation is the concept of

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<sup>11</sup> Maila D.H. Rahiem, 'COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia', *Child Abuse and Neglect*, 118.95 (2021), 105168 <<https://doi.org/10.1016/j.chiabu.2021.105168>>.

<sup>12</sup> Malin Joleby and others, 'Offender Strategies for Engaging Children in Online Sexual Activity', *Child Abuse and Neglect*, 120.July (2021) <<https://doi.org/10.1016/j.chiabu.2021.105214>>.

<sup>13</sup> Julie Toft and others, 'Oral Health History in Children Referred to a Child Advocacy Center in Norway', *Child Abuse and Neglect*, 132.July (2022) <<https://doi.org/10.1016/j.chiabu.2022.105789>>.

<sup>14</sup> Robin Sen and others, "'When You're Sitting in the Room with Two People One of Whom... Has Bashed the Hell out of the Other'": Possibilities and Challenges in the Use of FGCs and Restorative Approaches Following Domestic Violence', *Children and Youth Services Review*, 88. March (2018), 441-49 <<https://doi.org/10.1016/j.chilyouth.2018.03.027>>.

<sup>15</sup> Paula Andrea Valencia Londoño and others, 'The Exacerbation of Violence against Women as a Form of Discrimination in the Period of the COVID-19 Pandemic', *Heliyon*, 7.3 (2021) <<https://doi.org/10.1016/j.heliyon.2021.e06491>>.

reformation or rehabilitation, which is a sort of punishment designed to mend or rehabilitate the criminal so that he or she can be accepted back into the community.<sup>16</sup>

The position of restorative justice in Indonesia is clearly regulated by a number of laws and regulations, such as the 1945 Constitution of the Republic of Indonesia; Law Number 48 of 2009 concerning Judicial Power; Law Number 14 of 1985 as amended by Law Number 5 of 2004 as last amended by Law Number 3 of 2009 concerning the Supreme Court; and Law Number 48 of 2009 concerning Judicial Power.<sup>17</sup>

In addition, the Law on Judicial Power, particularly the Law of the Republic of Indonesia No. 48 of 2009 on Judicial Power, expressly stipulates in Article 5 that judges are required to investigate the values that exist in society (the living law or local wisdom). In essence, judges must or are obligated to employ a restorative justice approach or idea when resolving disputes, because such an approach or concept is consistent with the spirit of the Indonesian country, namely Pancasila, with customary law norms, and with religion values.<sup>18</sup>

The terms of combating the crime of road accidents, the Act contains numerous regulations. However, the law does not expressly regulate the process of overcoming the crime of traffic accidents in order to realize an essential (restorative) recovery that safeguards human rights. Positive legal circumstances in the Indonesian criminal justice system cannot be left or delayed until a reform in the law permits the implementation of restorative justice.<sup>19</sup> crime in Indonesia, particularly when alterations to criminal procedure law or criminal law in general are not a legislative priority. In the Indonesian criminal justice system, ignoring the concept of restorative justice involves ignoring victims, their families, and community members who are harmed by the commission of crimes.<sup>20</sup>

However, not all litigants are willing to participate in deliberations; in fact, the majority of them decline to do so. The party with the highest likelihood of rejecting a deliberation effort. This demonstrates that the resolution of a criminal case is not solely dependent on the creation of excellent laws. However, one kind of restorative justice activities will be the willingness of both parties to play an active role in settling disagreements between the two parties. However, in Indonesia itself, courts have begun to apply restorative justice in cases involving

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<sup>16</sup> Dr Karolina La Fors, 'Legal Remedies For a Forgiving Society: Children's Rights, Data Protection Rights and the Value of Forgiveness in AI-Mediated Risk Profiling of Children by Dutch Authorities', *Computer Law and Security Review*, 38 (2020), 105430 <<https://doi.org/10.1016/j.clsr.2020.105430>>.

<sup>17</sup> Sadhvi Kalra and Devin K. Joshi, 'Gender and Parliamentary Representation in India: The Case of Violence against Women and Children', *Women's Studies International Forum*, 82, July (2020), 102402 <<https://doi.org/10.1016/j.wsif.2020.102402>>.

<sup>18</sup> Tri Hartini, 'Legal Policy of Protection COVID-19 Patients in Hospitals', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 45–57 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.25>

<sup>19</sup> Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <https://doi.org/10.53955/jhcls.v2i1.31>

<sup>20</sup> Muhammad Ridwansyah and Asron Orsantinutsakul, 'The Strengthening of Guardian Institutions in Nangroe Aceh During the Autonomy Era', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 55–65 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.27>

traffic accidents with a restorative justice settlement, despite its limited application in their laws.<sup>21</sup>

The criminal has been found guilty and given a sentence and the victim's state cannot return to normal, the system that has been implemented (punitive) has not yet fully maximized the victim. The reduction of the case process in the judiciary, which can lead to justice and efforts to realize justice in a simple, quick, and cost-effective manner, has been the subject of ongoing discussion because it has close implications for every effort to enforce the law and provide legal services within the justice system.<sup>22</sup> The operating in accordance with societal norms, as outlined in Article 4 paragraph 2 of Law Number 4 of 2004 on Judicial Power. The explanation of the paragraph that this provision is intended to meet the expectations of those seeking justice and that it is simple is intended to ensure that the examination and settlement are carried out efficiently and effectively, while court costs that can be borne by the people without sacrificing justice's accuracy are meant by "low costs." Seek justice and the truth.<sup>23</sup>

Discretion in the Black Law Dictionary is derived from the Dutch word "Discretionair," which means "wisdom" in the context of deciding an action based on the provisions of rules, laws, or applicable laws, but on the basis of wisdom, thoughtfulness, or justice. In simple terms, discretion is the authority to make a judgment under given conditions based on one's personal ideas and considerations, in this case those of the police; discretion can also be read as the freedom to select among alternative courses of action. Given the significance of law enforcement (Police, Prosecutors, and Judiciary or Advocates), human resources (HR) are more significant than the product's content, or in this case the rules and regulations alone. Because law is not a sterile vacuum devoid of non-legal notions, law enforcement based solely on statutory requirements is inadequate. It must be viewed from a social perspective, taking into account the actual behavior that can be accepted by the individuals in it.<sup>24</sup>

According to Article 1 Number 9 of Law 30 of 2014 concerning Government Administration, discretion is a decision and/or action made and/or taken by government officials in order to overcome concrete problems encountered in the administration of government in terms of laws and regulations that do not provide choice, are not regulating, are incomplete or unclear, and/or government stagnation. In the Criminal Law, there is not a single regulation that provides a clear definition of discretion. For instance, the Police Law Number 2 of 2002 does

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<sup>21</sup> Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31-44 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>>.

<sup>22</sup> Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14-30 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>>.

<sup>23</sup> Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 1-13 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>>.

<sup>24</sup> Resti Dian and Suviwat Jenvitchuwong, 'Implementation of Halal Product Assurance in the Pharmaceutical Sector in Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 164-79 <<https://doi.org/https://doi.org/10.53955/jhcls.v1i3.19>>.

not mention the word discretion directly, but in Article 18 Paragraph (1) it is stated that the Indonesian National Police, in carrying out their duties and authority, may act according to their own judgment in the public interest. Self-evaluation might be regarded similarly to the concept of discretion, meaning the flexibility to make decisions. Following are the discretionary steps of the Indonesian Criminal Justice System.<sup>25</sup>

Individual discretion refers to decisions made by operational officers in the field without seeking instructions or decisions from their superiors. Bureaucratic discretion refers to actions to set aside cases, to detain or not detain suspects or perpetrators of law violations, or to stop the process investigation, because in making discretionary decisions it is based on or guided by the policies of leaders or superiors. One manifestation of police discretionary authority is the resolution of traffic accident cases by dialogue between the parties. Because traffic crimes are typically not intentional, police discretion can be used to solve them. In this situation, there is merely an element of ignorance. The settlement reached through this Deliberation is an out-of-court settlement or Alternative Dispute Resolution (ADR), where one of the ADR processes in criminal law is known as prison mediation. According to Ms. Toulemonde (French Minister of Justice), penal mediation is an alternative form of prosecution that allows for the prospect of a mediated settlement between a criminal and the victim.<sup>26</sup>

There are two sorts of mechanisms for resolving traffic accident matters outside of court: Prior to the issuance of the police report, the police employ discretionary authority to resolve traffic accident cases outside of court. In this instance, traffic accident cases are restricted to individuals with minimal injuries or losses. In this instance, the settlement method consists of police investigators bringing the culprit and victim together in relation to the selected case. If the perpetrator and the victim agree to make peace and the perpetrator is willing to compensate the victim for material or immaterial losses, a formal peace agreement letter is drafted on stamp duty and signed by the perpetrator, the victim, and known witnesses. The investigator then noted the case of the traffic collision in the registration book and brought it to the forefront.<sup>27</sup> However, if the culprit and victim are unable to reach an agreement, the case is proceeded in accordance with the Act's system for settling traffic accident cases.<sup>28</sup>

When handling traffic accident cases after the release of the police report, the police have discretionary jurisdiction. In this instance, a traffic accident caused

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<sup>25</sup> Moh Iqra, Syabani Korompot, and Al-fatih David, 'The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 135–46.

<sup>26</sup> Siti Nurbayani, Moh Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8.8 (2022), e10194 <<https://doi.org/10.1016/j.heliyon.2022.e10194>>.

<sup>27</sup> Ali Maksum, 'Indonesian Post-Migrant Workers: A Challenging Problem for Human Security', *Social Sciences & Humanities Open*, 4.1 (2021), 100223 <<https://doi.org/10.1016/j.ssaho.2021.100223>>.

<sup>28</sup> Khaerul Umam Noer, Siti Chadijah, and Endang Rudiatin, 'There Is No Trustable Data: The State and Data Accuracy of Violence against Women in Indonesia', *Heliyon*, 7.12 (2021), e08552 <<https://doi.org/10.1016/j.heliyon.2021.e08552>>.

severe injuries and fatalities. The mechanism for resolving the case is administering first aid to the victim by transporting him or her to the hospital. During treatment, an agreement between the perpetrator and the victim and/or the victim's heirs regarding peace efforts or resolving the traffic accident case outside of court is possible. After the parties agree to make peace, they create a written peace agreement letter on stamp duty that is signed by both the perpetrator and the victim in the presence of known witnesses. Investigators continued to interview witnesses, interrogate suspects, and seize evidence before holding a case title meeting headed by the Deputy Chief of Police and attended by the heads of Traffic, Intelligence, Kasat Serse, Provos, Kanit Laka, and Laka. Each participant in the case title gives an opinion regarding the results of the case title, and the results are forwarded to the Chief of Police for consideration in determining whether the matter may be settled outside of court or must continue through the stages of the criminal judicial system. If the Kapolresta, based on the facts and opinions of the participants in the case, permits the settlement of the traffic accident case outside of court, the investigator will continue to complete the report of the examination and the letter notifying the public prosecutor of the investigation's commencement will not be sent. Then, the investigator records the case of the traffic accident in the register book in the right format.<sup>29</sup>

### **Conclusion**

Based on the description provided by the researchers in this study, it can be concluded that, in resolving accident cases outside of court, the police act only as a bridge or intermediary for the settlement of traffic accident cases, with the parties taking the initiative in selecting a settlement model. If the parties want to settle a traffic accident matter outside of court, police officers are not permitted to intervene or interfere. In addition, police officers are prohibited from interfering with the content of the provisions agreed to by each side.

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<sup>29</sup> Ferry Fathurokhman, 'The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases', *Procedia Environmental Sciences*, 17 (2013), 967–75 <<https://doi.org/10.1016/j.proenv.2013.02.115>>.



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