

Restorative Justice: A Model of Fair Traffic Accident Resolution

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Abstract

The principle of traffic accident case resolution in Indonesia has been governed in Article 310 of Law No.22 of 2009 about UULAJ (Traffic and Road Transportation Act) and Law No.8 of 1981 about KUHAP (Code of Criminal Procedure) does not know the resolution with penal mediation. Considering the data of research, it can be seen that the penal mediation rate for Sragen and Boyolali Resort Polices (Polres Sragen and Polres Boyolali) is 95%, while that for Polres Ciamis is 49.3%. The resolution does not realize the justice because there is no justice and law certainty, as it results in three resolution motifs: pure penal mediation, impure penal mediation, and penal. The recommendation given to the ideal resolution of traffic accident case is to revise the Article 310 of UULAJ by adding two clauses to give the victim and the perpetrator the opportunity of reconciling as restitutive attempt to realize justice, certainty, and usefulness. The process of restoration is conducted through penal mediation, *Victim offender Mediation* (VOM), giving the mediator a space to help the resolution of conflict between victim and perpetrator. This model can be applied at investigation level, prosecution, or trial level.

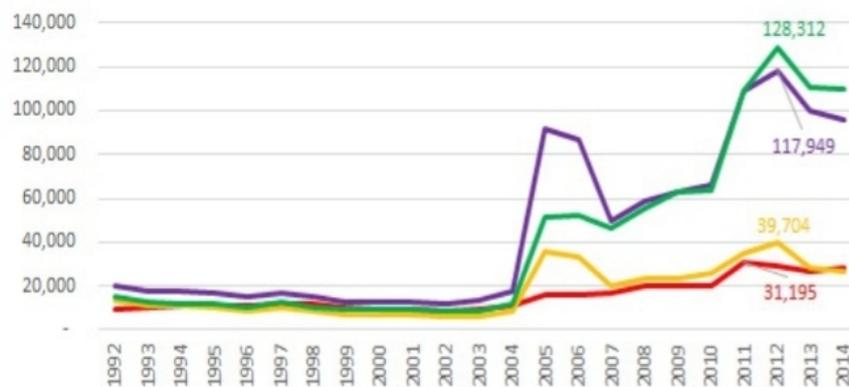
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Introduction

The number of life tolls due to traffic accident reaches 120 people per day (<http://www.republika.co.id>). Motorcycle has highest contribution to accident rate, 56% or 5,036 incidences out of total 9,002 accidents (<http://otomotif.bisnis.com>). Considering the Central Bureau of Statistic (BPS)'s data, it can be seen that the number of life tolls due to traffic accident is almost 360,000 (three hundred and sixty thousand) people during 1992-2014. This number is almost equal to the number of Yogyakarta populations, 380,000 people. It has not taken into account the data of accident not reported officially (<http://otomotif.bisnis.com>).

Figure

Number of Traffic Accidence and Victims



Lines: ___ Number of Incidence, ___ Death, ___ Severy Injury, ___ Mild Injury

Source: <http://otomotif.bisnis.com>

The data shows traffic accident incidence and resolution in Central Java Regional Police area during 2009-September 2013, indicating that out of 68,492 incidences, 58,795 or 85.84 % were resolved using non-litigation method (reconciliation) (Wahyono, 2014:370 – 379). The resolution of traffic accident at investigation level is conducted based on the police's discretion so far. The police investigator's discretion is implemented by means of selecting or screening the cases feasible to forward to the public prosecutor based on accident class consisting of: severe, mild, and medium accidents (Putri, 2015). *Alternative Dispute Resolution (ADR)* is a part of discretion in the process of

resolving the cases in investigation domain conducted by the police investigators. ADR mechanism is considered as contradictory with the rule of law because it is conducted after the document has been completed by investigator (Putri, Risa Dwi, 2015). The implementation of discretion by police potentially deviates from the positive meaning, because there is no external institution's control over the police investigator's action. In this study, research conducted based on questions how is the resolution of traffic accident case today? Then, what is the model of traffic accident case resolution based on justice value?

Methodology

This research sees the law as a social behavior pattern that is institutionalized and existent as an empirical social variable. This study type belongs to a legal sociological study, studying *law as it is in society*. This study belongs to an empirical or non-doctrinal research. The law is conceptualized sociologically as an empirical observable phenomenon in the life. Law is not conceptualized philosophically-morally as the norm of *ius constituendum* or *law as what ought to be* rather than positively as the norm of *ius constitutum* or *law as what it is the books*, but observable empirically in the experience realm (Wignjosoebroto, 2002:70).

Primary data was obtained from the result of interview with investigator of Polri (Republic of Indonesia's Police) in Polres Sragen, Polres Boyolali, and Polres Ciamis. These three jurisdictions were selected because all of the three are dense land transportation lane, thereby their traffic accident rate is also high. Interview was also conducted with Public Prosecutor in Karanganyar District Attorney, Judge, Behavior, and Victim family, autobus company, and academician. Secondary data includes official documents, books, result of research in the form of report, and diaries (Soekanto, 2008: 12).

Discussion

1. The Resolution of Traffic Accident Case

The high traffic accident rate is a serious problem to the states in the world, either developing or developed ones. This high rate is affected by many factors: human, vehicle, road and environment, and weather. Another problem encountered is the resolution of traffic accident case. It is because, although the procedure of resolution it has been governed in Law No. 22 of 2009 about Traffic and Road Transportation Act (UULAJ), at practical level, there is a different resolution procedure from the one mentioned in UULAJ.

This representation of traffic accident case resolution is taken from the research conducted in District Police (*Polres*) in Sragen, Boyolali, and Ciamis's jurisdictions. The three locations were selected because Polres Sragen's jurisdiction is the main road from Surabaya to Solo, Polres Boyolali's is the main road from Solo to Jakarta, and Polres Ciamis' is the main road from Yogyakarta to Bandung. As the main road from big cities in Java Island, the three jurisdictions have high traffic accident rate.

The data of traffic accident rate in the three jurisdictions is shown as follows:

1.1. Polres Sragen

Table 1
Data of Traffic Accident Resolution in Polres Sragen

No	Year	CASES	VICTIM			RESOLUTION				NOTE
			MD	LB	LR	BAC	P-21	SP3	POM	
1	2013	758	108	22	769	752	6	-	-	0
2	2014	717	29	51	772	708	7	-	1	1
3	2015	784	119	2	766	734	9	2	-	39
4	2016	793	111	0	875	757	2	-	1	33
5	MEI2017	292	42	1	329	242	2	-	-	48
Total		3344	409	76	3511	3193	26	2	2	121

Source: Traffic Unit of Polres Sragen (Data was taken on May 29, 2017).

About 3,344 traffic accident cases have occurred in Polres Sragen's jurisdiction during January 2013-May 2017. Out of them, only 26 cases or 0.7% are processed in the court (P-21). About 3,193 cases or 95.4% are resolved based on kinship principle (BAC). About 125 cases or 3.7% are submitted to Denpom (Military Authority) or as case remainder (SP-3).

1.2. Polres Boyolali

Table 2
Data of Traffic Accident Resolution in Polres Boyolali

No	Year	CASES	VICTIM			RESOLUTION				NOTE
			MD	LB	LR	BAC	P-21	SP3	POM	
1	2013	542	128	3	688	519	19	3	1	-
2	2014	692	137	7	781	661	13	1	-	17

3	2015	738	124	6	786	703	2	5	2	26
4	2016	703	132	7	792	682	2	3	3	13
5	May 2017	561	98	2	694	521	6	2	-	32
Total		3236	619	25	3741	3086	42	14	6	88

Source: Traffic Unit of Polres Boyolali (Data was taken on June 5, 2017).

During January 2013-May 2017, 3,236 traffic accident cases have occurred in Polres Boyolali's jurisdiction. Out of them, 42 cases or 1.2% are processed in the court. About 3,086 cases or 95.3% are resolved based on kinship principle. About 108 cases or 3.3% are submitted to Denpom or as case remainder (SP-3).

1.3. Polres Ciamis

Table 3
Data of Traffic Accident Resolution in Polres Ciamis

No	YEAR	CASES	VICTIM			RESOLUTION				NOTE
			MD	LB	LR	BAC	P-21	SP3	POM	
1	2013	172	79	45	182	88	37	38	5	4
2	2014	295	113	34	396	174	57	44	5	15
3	2015	324	117	54	385	180	65	52	2	25
4	2016	340	154	141	318	132	109	75	3	21
5	May 2017	126	63	60	103	46	40	30	-	10
Total		1257	526	334	1384	620	308	239	15	75

Source: Traffic Unit of Polres Ciamis (Data was taken on June 15, 2017).

About 1,257 traffic accident cases have occurred in Polres Ciamis's jurisdiction during January 2013-May 2017. Out of them, 308 cases or 24.5% are processed in the court. About 620 cases or 49.3% are resolved based on kinship principle. About 329 cases or 26.1% are submitted to Denpom or as case remainder, because SP-3 is published.

Table 4
Comparative Data of Traffic Accident Resolution

No	POLRES	RESOLUTION		
		SP-3, POM	P-21	BAC
1	Sragen	2 (3.7%)	26 (0.7 %)	3.193 (95.4 %)
2	Boyolali	108 (3.3%)	42 (1.2%)	3.086 (95.3 %)
3	Ciamis	239 (26.2%)	308 (24.5%)	620 (49.3%)

The resolution of traffic accident case conducted using penal mediation (out of the court) is conducted in three jurisdictions of Polres Sragen, Polres Boyolali, and Polres Ciamis, with Polres Sragen and Polres Boyolali's jurisdictions occupying the highest rate, 95%, while that in Ciamis jurisdiction is 49.3%. The consensus of reconciliation between victim and family, and the perpetrator cannot completely resolve the accident case. The consensus of reconciliation can be followed with the end of case, when the consensus or agreement occur at investigation stage in Polri's investigator or when the investigation document has not been transferred yet to public prosecutor (P-21). This rate, according to Harkristuti Harkrisnowo, is *the dark number of crimes*, i.e. not all perpetrators of crime will be processed (Harkrisnowo, 2003: 3).

The achievement of reconciliation consensus as proved with the statement will be used by Polri's investigator to cease the case investigation process (Interview with Informant A, conducted in Polres Sragen on May 29, 2017). The termination of case investigation conducted by Polri's investigator will not be conducted by publishing the Investigation Ceasing Writ (SP-3), but it will be considered as finished, or called BAC in the monthly report made by the Traffic Unit (*Satlantas*) in each of Polres. The termination of case conducted by not publishing SP-3 is due to Polri's investigator indeed has not published Investigation Beginning Writ (SPDP) yet delivered to Public Prosecutor. SPDP will be published by Polri's investigator when there is no reconciliation consensus between perpetrator and victim or family.

The high-resolution rate with this non penal attempt is in line with Anthony Allotts' theory, seeing the law as a communication process system; therefore, law becomes a subject to the same problems in transferring and receiving message, like other communication systems (Salman, et al, 2008:96). The use of communication in accident case resolution affects significantly on the high-resolution rate using penal mediation. The communication is conducted by the perpetrator to the victim or its family as the admission and the apology for the fault made by the perpetrator.

2. Traffic Accident Resolution Model

Generally, traffic accident has been governed in Articles 310 and 311 of UULAJ, while article 312 governs the incriminating condition in traffic accident, i.e. escaping or not helping the victim. The regulation in Articles 310 and 311 of UULAJ gives significant difference, when it is related to the form of fault made by the perpetrator.

Article 310 of UULAJ includes the fault constituting unconscious negligence (unconscious) or poor thinking (*onnadenkend*) or inattentiveness or carelessness (*onoplettend*). Unconscious negligence is also called mild negligence or *negligentia* or *onbewuste culpa* or *culpa levis* or *culpalevisime* (Hiariej, 2009:152). Article 311 of UULAJ includes the form of fault constituting conscious negligence or *bewusteculpa* or *luxuria*, in which the perpetrator thinks that there will be no consequence of his/her deed, while the view is wrong (Hiariej, 2009:152).

The high dark number of crimes or the resolution of traffic accident case with penal mediation indicates the widening gap between *das sollen* and *das sein*. Dualism occurs due to offensive movement of the central rule (power) with its national law on the one hand and “test-resistant” defensive position” of *localrechtsgemeenschappen* with its informal law on the other hand, has result in a phenomenon called legal gap (Wignjosoebroto, 2008:125). There is a dispute concerning what is considered as official by national rule and what is undertaken in daily life as the law by local community.

This difference, according to Barda Nawawi Arief, is due to inconsistency at legislation policy stage in distinguishing criminal sanction and action sanction types. The objective of condemnation should be formulated first, so that method, instrument, and action to be used can be determined. The formulation of condemnation’s objective will be binding or link each of condemnation stages into a chain link in an integral rational system (Prasetyo, 2013:82-83).

Legal gap problem should be solvable using at least three policy measures taken and conducted by the bodies responsible for the successful national law development (Wignjosoebroto, 2008:126). Firstly, the measure taken is to utilize legal sanction authority efficiently and effectively to compel the citizens to switch from their loyalty as *popular order* participants to their new loyalty as the participants of *national legal order*. Secondly, the policy measure is taken in more educative way, through education and generating new consciousness of such the purpose. Thirdly, legal reform is a policy measure taken by means of revising or reforming certain parts of the legal content of the preexisting law in such a way that the state law can function more adaptively to real situations existing in the members of community’s life (Wignjosoebroto, 2008:127-128).

Legal reform policy can be implemented through reconstructing UULAJ. The revision of *culpa levis* in Article 310 UULAJ departs from the data of traffic accident case resolution indicating the high-resolution rate with reconciliation or non-litigation method or penal mediation. Revising this resolution is important because *firstly*, UULAJ (Traffic and Road Transportation Act) does not recognize the resolution with penal mediation. *Secondly*, the use of Kapolri's regulation as the foundation of case resolution using *penal mediation* is in contradiction with UULAJ constituting the norm with higher position. *Lex superior derogat legi inferiori*, when a conflict occurs between higher and lower legislations, the higher one should take precedence over the lower one. *Thirdly*, there is double standard in the resolution of traffic accident case. Different legal interpretation made by the law enforcers results in inconsistency in law enforcement, in either type of punishment or action sanction (Lukito, 2008:64). A comprehensive approach should be taken from many other social disciplines and integral approach with social policy and national development in general (Arief, 2008:20). The inconsistency of law enforcement has been confirmed in the UN's 6th Congress Report in 1980, "Often, lack of consistency between laws and reality was criminogenic, the farther the law was removed from the feeling and the values shared by the community, the greater was the lack of confidence and trust in the efficacy of the legal system" ((Arief, 2015:19).

The idea to be built in this revision is in contrast to the objective of condemnation to be achieved, *monodualistic* criminal law, as *kalimatun sawaa'* or meeting point or center point between repressive and preventive attempts of criminal law. *Kalimatun sawaa'* is the meeting point amid diversity and differences (Misrawi, 2007:13). *Kalimatun sawaa'* is used as an attempt of confronting the differences between *das sollen* and *das sein* occurring so far. Monodualistic is a concept of equilibrium that can pay attention to people and individual's interests, perpetrator and victim, justice and law certainty, and legality and perpetrator guilty principles.

The objective of condemnation that can support monodualistic concept is contemporary theory. The objective of condemnation, according to Lavafe, is to give *deterrence effect* to the perpetrator of crime in order not to repeat its deed, to be social control, in which the crime is isolated to make the dangerous deed performed not harming the people because people should be protected from the perpetrator's bad deed. The last objective of condemnation is to restore the justice or to be *restorative justice*, an approach to resolving the criminal case by involving crime perpetrator, victim, victim or perpetrator family, and others bond to look for a fair resolution by emphasizing on the restoration of condition, rather than on the revenge (Wignjosoebroto, 2008:138).

Durkheim stated, “*It is law with attempts to restore things as they are. It embraces all civil law, procedural law, administrative law, law of tort, etc. Restitutive law tries to maintain the social relations as they arise from the differentiation of social labour. They are not based on ‘conscience collective’ and do not involve the same strong sentiments. Consequently, it is not so bad to suffer from a restitutive sanction as from a repressive sanction*”. Restorative justice is basically a restitution principle by means of involving victim and perpetrator in the process aiming to securing the repairing for the victim and the rehabilitation of perpetrator (Chand, Hari, 1994:184).

Legal revision that can be conducted at policy making level (*Rechtsforming*) in traffic accident case is:

Table 5
Article 310 and its weaknesses

Article 310 UULAJ	Weaknesses
(1) Anyone driving motor vehicle, who because of his negligence results in traffic accident and the damage of vehicle and/or object as mentioned in Article 229 clause (2), will be condemned with at most 6 (six) month-imprisonment and/or IDR 1,000,000 (one million rupiah) fine.	(1) No resolution with <i>penal mediation</i> is known.
(2) Anyone driving motor vehicle, who because of his negligence results in traffic accident with mildly injured victim and the damage of vehicle and/or object as mentioned in Article 229 clause (3), will be condemned with at most 1 (one) year-imprisonment and/or IDR 2,000,000 (two million rupiah) fine.	(2) At empirical level, it is often overridden by Kapolri’s Regulation No.15 of 2013 about Procedure of Dealing with Accident.
(3) Anyone driving motor vehicle, who because of his negligence results in traffic accident with severely injured victim as mentioned in Article 229 clause (4), will be condemned with at most 5 (five) year-imprisonment and/or IDR 10,000,000 (ten million rupiah) fine.	(3) It cannot achieve justice and law certainty

<p>(4) In the case of accident as mentioned in clause (3), making others dead, the one will be condemned with at most 6 (six) year-imprisonment and/or IDR 12,000,000 (twelve million rupiah) fine.</p>	
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Table 6
Revision of Article 310 and its strengths

Revision of Article 310 of UULAJ	Strengths
<p>(1) Anyone driving motor vehicle, who because of his negligence results in traffic accident and the damage of vehicle and/or object as mentioned in Article 229 clause (2), will be condemned with at most 6 (six) month-imprisonment and/or IDR 1,000,000 (one million rupiah) fine.</p>	<p>(1) Penal mediation is attempted obligatorily at all examination stages.</p>
<p>(2) Anyone driving motor vehicle, who because of his negligence results in traffic accident with mildly injured victim and the damage of vehicle and/or object as mentioned in Article 229 clause (3), will be condemned with at most 1 (one) year-imprisonment and/or IDR 2,000,000 (two million rupiah) fine.</p>	<p>(2) When the reconciliation is achieved, judge's stipulation is published mandatorily.</p>
<p>(3) Anyone driving motor vehicle, who because of his negligence results in traffic accident with severely injured victim as mentioned in Article 229 clause (4), will be condemned with at most 5 (five) year-imprisonment and/or IDR 10,000,000 (ten million rupiah) fine.</p>	<p>(3) When the reconciliation is not achieved, the case will be forwarded to the court session.</p>
<p>(4) In the case of accident as mentioned in clause (3), making others dead, the one will be condemned with at most 6 (six) year-imprisonment and/or IDR 12,000,000</p>	<p>(4) It gives justice more to perpetrator and victim, guarantees law certainty, and benefits the perpetrator and victim, and public.</p>

(twelve million rupiah) fine.	
(5) The resolution of Traffic Accident case as mentioned in this Article should be attempted with reconciliation between victim and perpetrator at all case examination stages.	
(6) In the case of reconciliation consensus is achieved between victim and perpetrator, it is stipulated with judge's stipulation, and in the case of reconciliation consensus is not achieved, the case will be forwarded to the court trial (session).	

The revision of Article 310 of UULAJ, the addition of two (2) clauses to it, governs the *penal mediation* to attempt obligatorily at all examination stages. When the reconciliation is achieved, the judge's stipulation should be published mandatorily, but otherwise, the case should be forwarded to the court. This revision of Article 310 gives more justice to perpetrator and victim, guarantees law certainty, and benefits perpetrator, victim, and public.

The restoration process is conducted by means of discussion or penal mediation as conducted so far, involving the third party, for example, village government elements. Penal mediation that can be applied is *Victim Offender Mediation* (VOM) model, giving the mediator a space to help resolve the conflict between victim and perpetrator. This model can be applied to investigation, prosecution, and court session stages. Mediator can come from anywhere, as approved mutually.

This constructed revision will give a space to attempt the reconciliation in all stages of case examination, involving the family of all parties as the part of restorative justice concept. *Restorative justice* emphasizes on correcting the loss (harm) generated or revealed by the crime perpetrator. The basis of restorative justice is basic philosophy, the fourth principle prioritizing discussion in decision making. The objective to be achieved is "to humanize" justice system, the justice that can answer the needs of victim, perpetrator, and public (Prayitno, 2012:407).

Conclusion

The principle of traffic accident case resolution is consistent with Article 310 of Law No.22 of 2009 about Traffic and Road Transportation and Law No.8 of 1981 about Criminal Procedural Code. Article 310 of Law No.22

of 2009 does not know the resolution out of the court or penal mediation. Data of research on the resolution of traffic accident case shows that the resolution is conducted with the reconciliation effort out of the court or penal mediation in the three jurisdictions occupying the highest rank: Polres Sragen, Polres Boyolali, and Polres Ciamis. The resolution with reconciliation rate is 95.4% in Polres Sragen's jurisdiction, 95.3% in Polres Boyolali's, and 49.3% in Polres Ciamis'.

Revision of traffic accident case resolution is made by means of revising the Article 310 of UULAJ by adding two clauses to it: clauses (5) and (6):

- (5) The resolution of Traffic Accident case as mentioned in this Article should be attempted through reconciliation between victim and perpetrator at all case examination stages.
- (6) In the case of reconciliation consensus is achieved between victim and perpetrator, it is stipulated with judge's stipulation, and in the case of reconciliation consensus is not achieved, the case will be forwarded to the court trial (session).

Recommendation

Material of traffic should be included into the curriculum of primary education as the attempt of education pillar, aiming to enable the primary education-age children to know the procedure and the order of traffic, so that it can be internalized into early age children, just like Japanese understand *shingou* or しんごう or 信号.

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