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Criminal Law Policy on the Application of Restorative Justice to Traffic Offenses Resulting in Death

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Abstract: There are interpretive issues regarding traffic offenses resulting in death as regulated under Article 310 paragraph (4) of Law Number 22 of 2009 which stands at the intersection between the exclusion clauses of Article 82 letters e and f of the new Criminal Procedure Code. This study aims to analyze the juridical position of restorative justice following the reform of the Criminal Code and Criminal Procedure Code, as well as to formulate a more proportional direction for criminal law policy in its application to fatal traffic offenses. The research employs a normative juridical method with statutory and conceptual approaches. The findings show that restorative justice constitutes a manifestation of the objectives of punishment under Articles 51 and 54 of the National Criminal Code, a textual disharmony exists between Article 82 letters e and f of the Criminal Procedure Code concerning fatal traffic offenses. A systematic examination of the structure of the National Criminal Code reveals a separation between intentional homicide offenses (Chapter XXI) and negligence-based offenses causing death (Chapter XXIII). Article 310 paragraph (4) of the Road Traffic Law is more appropriately classified as a negligence-based offense. This normative ambiguity still requires further clarification through legislative harmonization.

Keywords: Restorative Justice, Traffic Offenses, Criminal Law Policy, National Criminal Code, Criminal Procedure Code

Abstrak: Terdapat persoalan penafsiran terhadap tindak pidana lalu lintas yang mengakibatkan hilangnya nyawa sebagaimana diatur dalam Pasal 310 ayat (4) Undang-Undang Nomor 22 Tahun 2009 yang berada pada persimpangan antara klausul pengecualian Pasal 82 huruf e dan huruf f KUHP baru. Penelitian ini bertujuan menganalisis kedudukan yuridis restorative justice pascareformasi KUHP dan KUHP, serta merumuskan arah kebijakan hukum pidana yang lebih proporsional dalam penerapannya terhadap tindak pidana lalu lintas berakibat fatal. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa keadilan restoratif merupakan manifestasi tujuan pemidanaan dalam Pasal 51 dan 54 KUHP Nasional, terdapat disharmoni tekstual antara Pasal 82 huruf e dan huruf f KUHP terkait tindak pidana lalu lintas fatal. Kajian sistematis atas struktur KUHP Nasional menunjukkan pemisahan antara delik pembunuhan berbasis kesengajaan (Bab XXI) dan delik

kealpaan penyebab kematian (Bab XXIII). Pasal 310 ayat (4) UU LLAJ lebih tepat dikualifikasikan sebagai delik kealpaan sehingga tetap terbuka bagi mekanisme restorative. Ambiguitas normatif ini tetap memerlukan penegasan lebih lanjut melalui harmonisasi peraturan perundang-undangan.

Kata Kunci: Keadilan Restoratif, Tindak Pidana Lalu Lintas, Kebijakan Hukum Pidana, KUHP Nasional, KUHP

INTRODUCTION

The regulation of restorative justice in Indonesia Law Number 1 of 2023 concerning the Criminal Code as amended by Law of the Republic of Indonesia Number 1 of 2026 concerning Criminal Adjustment (National Criminal Code) which came into effect on January 2, 2026 shows a shift in the orientation of punishment from a purely punitive approach to an approach that emphasizes social restoration and harmonization. This is reflected in Article 51 of the National Criminal Code which places criminalization as a means of resolving conflicts and restoring balance in society, as well as Article 54 paragraph (1) letters (j) and (k) of the National Criminal Code which requires judges to consider the forgiveness of victims and the value of justice that lives in society in imposing sentences.

Article 70 of the National Criminal Code encourages that prison sentences should not be imposed as much as possible if the perpetrator has committed a criminal act for the first time, the victim's losses are relatively small, or the losses have been recovered, so that the punishment is more directed at coaching and rehabilitation. The strengthening of the restorative principle is also seen in Article 132 of the National Criminal Code, which allows the prosecution to be dropped if the case has been resolved outside the judicial process, emphasizing that a peaceful settlement that restores social relations is recognized as part of the reform of the national criminal law.

The renewal of the criminal procedural law through Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP), this update also marks a paradigm shift in law enforcement from a purely repressive approach to an approach oriented towards substantive justice and restoration through restorative justice mechanisms. Restorative justice is defined as an approach to resolving criminal cases by involving the perpetrator, victims, and related parties to restore the original state, and has been part of the authority of investigators and public prosecutors since the early stages of case handling. Further arrangements regarding this mechanism are regulated in Articles 79 to 88 of the Criminal Procedure Code.

Article 80 and Article 81 of the Criminal Code stipulate that restorative justice can be applied to minor crimes with limited criminal threats, committed by non-recidivist perpetrators, and carried out voluntarily without pressure or coercion. This mechanism emphasizes conflict resolution through a peaceful agreement between perpetrators and victims with the aim of restoring losses and social relations, while reducing the burden of formal justice. However, Article 82 of the Criminal Procedure Code provides strict restrictions by excluding serious crimes such as terrorism, corruption, sexual violence, crimes against life, and other criminal acts that have a wide impact on society.

Articles 83 to 88 regulate the application of restorative justice at every stage of the judicial process, starting from investigation, investigation, prosecution, to examination in court. The agreement on the settlement of the case reached is the basis for the termination of the legal process while still accompanied by court supervision to ensure legal certainty and prevent abuse of authority. This arrangement shows that restorative justice is an important instrument for reforming Indonesia's criminal procedure law that is oriented towards recovery, substantive justice, and the protection of the interests of victims and the community.

Empirically, the high number of traffic accidents also strengthens the urgency of this study. Data from the Traffic Corps of the National Police of the Republic of Indonesia shows that throughout 2024 there will be hundreds of thousands of traffic accidents with more than 26 thousand deaths (Tempo.co, 2024). Although by 2025 the figure will drop by 19.8 percent thanks to the humanist and educational approach intensified by the police (Gaikindo, 2026).

This phenomenon places traffic accidents resulting in loss of life as one of the most processed criminal acts in the Indonesian criminal justice system. Ironically, the majority of these incidents are born not from the perpetrator's malicious intent (*mens rea*), however from situational negligence or *culpa* (Isman, 2026), therefore a retributive approach oriented towards retaliation is considered less relevant to be applied absolutely. Victims and victims' families also in practice more often take the path of peace outside the formal judicial process as a form of recovery for the losses experienced.

Within the framework of penal policy as part of criminal policy (Barda Nawawi Arief, 2010) the use of criminal law should ideally not be the only means (*ultimum remedium*) however must be balanced by non-penal means that are oriented towards restoring relationships between perpetrators, victims, and the community. As described above, the position of restorative justice for traffic crimes resulting in death is now at the intersection between strict exceptions in the Criminal Code and the sustainability of sectoral practices that have been running for more than five years, a condition that has not been studied in depth in the Indonesian criminal law literature after the reform of the National Criminal Code and the Criminal Procedure Code.

Based on this description, this research is formulated into two problems: first, how is the position of restorative justice in criminal law policy in Indonesia after the enactment of the National Criminal Code and the new Criminal Procedure Code; second, how to apply restorative justice to traffic crimes that result in the loss of life in the midst of potential overlapping norms, as well as the challenges and directions of criminal law policies that are needed in the future. This research aims to analyze the juridical position of restorative justice in the current Indonesian criminal law system and formulate a more proportionate and harmonious direction of criminal law policy in its application to traffic crimes that result in loss of life.

METHODS

This research employs a normative legal research method (juridical-normative research), which examines law as a body of written norms by treating laws and regulations as the primary legal materials. The approaches employed include the statutory approach, which is conducted by examining the Criminal Code, the Criminal Procedure Code, Law Number 22 of 2009 concerning Road Traffic and Road Transportation, Police Regulation Number 8 of 2021, and Prosecutor's Regulation Number 15 of 2020; as well as the conceptual approach, which is used to explore legal concepts, doctrines, and principles related to restorative justice and criminal law policy. The legal materials used consist of primary legal materials, in the form of laws and regulations; secondary legal materials, including books, scholarly journals, and relevant previous research; and tertiary legal materials, including legal dictionaries and official electronic sources. The legal materials were collected through library research, while the analysis was conducted qualitatively using a descriptive-analytical method, namely by describing the collected legal materials and subsequently analyzing them systematically to address the research problems.

RESULTS AND DISCUSSION

The Position of Restorative Justice in Criminal Law Policy in Indonesia

Criminal law policy is basically an integral part of social policy which consists of social welfare policy and social defence policy (Arief, 2005). As part of community protection efforts, criminal law should ideally be used rationally and proportionately, not solely oriented towards retributive, but also paying attention to the restorative aspect. This paradigm shift is the basis for the development of restorative justice as one of the directions of contemporary criminal law policy in Indonesia.

Restorative justice can be conceptually understood as a criminal case resolution process that prioritizes restoration to the original state, not retribution (Muhaimin, 2019), by involving perpetrators, victims, and interested parties to jointly determine a settlement that is felt fair by all parties. This approach is in line with the principle of *ultimum remedium* which places criminal law as a last resort after other efforts are considered inadequate. Case resolution through *restorative justice* which is translated as restorative justice is a model approach that emerged in the 1960s, in an effort to resolve criminal cases that is different from the approach used in the conventional criminal justice system, where the restorative justice approach focuses on the direct participation of perpetrators, victims, and the community in the criminal case settlement process. Handling cases through restorative justice offers different views and approaches and understands and handles a criminal act, where there is an obligation from the perpetrator to repair the damage to the relationship or loss due to a criminal act (Purba, 2017).

In the context of Indonesia, Bagir Manan mentioned that the concept and principles of restorative justice have actually been practiced by a number of indigenous peoples of Indonesia (Prakorso, 2013). Braithwaite said:

“Several years ago in Indonesia I was told of restorative justice rituals in western Sumatera that ere jointly conducted by a religious leader and scholar-the person in community seen as having the greatest spiritual riches and the person seen as having the greatest of learning. My inclination when was to recoil from the elitism of this and insist that many (if not most) citizens have the resources (given a little help with training) to facilitate processes of healing. While I still believe this, I now think it might be a mistake to seek the persuade Asians to democratize their restorative justice practice” (Rufinus Hotmaulana Hutauruk, 2013).

In Article 51 of Law Number 1 of 2023 concerning the Criminal Code as amended in Law Number 1 of 2026 concerning Criminal Adjustment, it is stipulated that the purpose of punishment includes: (1) preventing criminal acts by enforcing legal norms; (2) rehabilitating prisoners through coaching; (3) resolving conflicts caused by criminal acts, restoring social balance, and providing a sense of security and peace in society; and (4) fostering remorse in the convict. These four goals, normatively restorative justice is most closely related to the third goal, namely conflict resolution and restoration of social balance, so that this concept is not outside the national penal system, but is a direct manifestation of the purpose of punishment explicitly adopted in the New Criminal Code. The purpose of preventing criminal acts itself is intended to avoid the occurrence of crimes in the future through the enforcement of legal norms that are the foundation of public security (Dewi et al., 2026). Meanwhile, the restorative justice approach also contributes by addressing the root causes of criminal behavior so that it can reduce the rate of repetition of criminal acts or recidivism (Allison & NadIRA, 2024). In addition, sentencing also aims to provide guidance to inmates to facilitate their reintegration process into society (Kristiyadi & Setyawan, 2022), which in the practice of restorative justice is realized through rehabilitation programs that help offenders understand the impact of their actions and encourage behavioral change and personal growth.

Article 1 number 21 of Law Number 20 of 2025 concerning the Criminal Procedure Code regulates the definition of Restorative Justice, which is an approach to handling criminal

cases committed by involving parties, both victims, victims' families, suspects, suspects' families, defendants' families, defendants' families, and/or other related parties, which aim to seek restoration of the original state. This definition emphasizes that restorative justice places victims and perpetrators as the main subjects in the settlement of criminal cases.

Article 7 paragraph (1) letter k of Law Number 20 of 2025 concerning the Criminal Procedure Code gives the authority to Investigators to resolve cases through the mechanism of restorative justice. This arrangement is strengthened by the provisions of Article 65 letter j which gives similar authority to the Public Prosecutor. Thus, the mechanism of restorative justice has been normatively integrated in the authority of law enforcement officials since the early stages of the criminal justice process. The mechanism of restorative justice in Law Number 20 of 2025 concerning the Criminal Procedure Code is further regulated in Articles 79 to 88. Article 80 of Law Number 20 of 2025 concerning the Criminal Procedure Code stipulates that:

- (1) *“The Restorative Justice Mechanism can be imposed on criminal acts that meet the following requirements:*
 - a. criminal acts are threatened only with a maximum fine of category III or threatened with imprisonment for a maximum of 5 (five) years;*
 - b. criminal act that was first committed; and/or*
 - c. It is not a repetition of a criminal act, except for criminal acts whose verdict is in the form of a fine or a criminal act committed due to forgetfulness.*
- (2) *In the event that there has not been a criminal act as referred to in paragraph (1), based on the victim's report, a Restorative Justice mechanism is carried out at the investigation stage in the form of a peace agreement between the perpetrator and the victim”.*

Article 80 of Law Number 20 of 2025 concerning the Criminal Procedure Code affirms the normative recognition of the restorative justice mechanism as an integral part of Indonesia's criminal procedure law by setting clear limits on the type of criminal act and the character of the perpetrator that can be resolved through this approach, namely minor crimes that are only threatened with a maximum fine of category III or imprisonment for a maximum of five years, committed by the perpetrator who commits a criminal act for the first time, and does not constitute a repetition of a criminal act except in certain cases such as forgetfulness or a previous verdict in the form of a fine.

Article 82 of Law Number 20 of 2025 concerning the Criminal Procedure Code stipulates that:

- “The Restorative Justice Mechanism is excluded for:*
- a. crimes against state security, crimes against friendly countries, friendly heads of state and their deputies, public order crimes, and moral crimes;*
 - b. Terrorism Crimes;*
 - c. Corruption;*
 - d. sexual violence;*
 - e. criminal acts that are threatened with imprisonment of 5 (five) years or more, except for negligence;*
 - f. criminal acts against people's lives;*
 - g. criminal acts that are threatened with a special minimum penalty;*
 - h. certain criminal acts that are very dangerous or detrimental to the community; and/or*
 - i. Narcotics crimes except those who have the status of users or abusers.”*

The exception provisions in Article 82 of the new Criminal Procedure Code need to be examined more deeply, especially in letters e and f, because both contain formulas that are not fully in harmony with each other textually when faced with the characteristics of traffic crimes

that result in loss of life. Article 82 letter e of the Criminal Procedure Code excludes restorative justice for “criminal acts that are threatened with imprisonment of 5 (five) years or more, except for negligence”, which means that this norm explicitly opens up space for criminal acts born of forgetfulness (*culpa*) to still be resolved through restorative mechanisms, even if the criminal threat is five years or more. On the other hand, Article 82 letter f of the Criminal Code excludes “criminal acts against the life of a person” without a similar exception clause for *culpa* offenses. This difference in formulation raises interpretation problems when the two norms are faced with the same legal event, namely a traffic accident that results in death, as stipulated in Article 310 paragraph (4) of the Law on Road Traffic and Transportation which threatens a maximum prison sentence of six years.

This issue becomes more concrete when we look at the structure of the norms of Article 310 of the Law on Road Traffic and Transportation as a whole, which arranges criminal threats in stages based on the severity of the consequences caused by the driver's negligence: paragraph (1) threatens imprisonment for a maximum of six months for accidents that only result in damage to vehicles and/or goods; paragraph (2) threatens imprisonment for a maximum of one year for accidents with minor injuries; paragraph (3) threatens imprisonment for a maximum of five years for accidents with serious injuries; and paragraph (4) threatens imprisonment for a maximum of six years if the accident as referred to in paragraph (3) results in the death of another person. All gradations of criminal threats still rely on the element of negligence (*culpa*) as the basis for criminal liability, not intentionality (*dolus*), so that doctrinally Article 310 paragraph (4) should be included in the qualification of “criminal act due to negligence” as referred to in the exception phrase in Article 82 letter e of the Criminal Procedure Code. The problem is, Article 310 paragraph (4) of the Law on Road Traffic and Transportation factually also produces consequences in the form of loss of life of another person, so that the same event at the same time has the potential to be qualified as a “criminal act against the life of a person” as referred to in Article 82 letter f of the Criminal Procedure Code.

To answer this confusion of interpretation, it is necessary to trace how the National Criminal Code actually classifies “criminal acts against human life” systematically. The National Criminal Code places the crimes related to the loss of human life in two separate chapters and different bases for criminal responsibility. First, the Second Book of Chapter XXI of the National Criminal Code, entitled “Crimes against Life and the Fetus”, covers Articles 458 to 465, which regulate the crime of murder (Articles 458–462) and the crime of abortion (Articles 463–465). Article 458 paragraph (1) formulates the crime of murder as the act of “taking the life of another person”, with a threat of imprisonment for a maximum of 15 years, while Article 459 regulates premeditated murder with the threat of the death penalty, life imprisonment, or imprisonment for a maximum of 20 years. All offenses in Chapter XXI are prepared on the basis of intentional deprivation (*dolus*) of taking the life of another person, even though the formulation “deliberately” is no longer explicitly included in the article, because the element of intentionality has been regulated in general in Article 36 and Article 54 letter j of the National Criminal Code. Second, it can be the key to solving the problem in this study, the National Criminal Code regulates the death of a person due to negligence in a completely different chapter, namely the Second Book Chapter XXIII entitled “Criminal Acts Resulting in Death or Injury Due to Negligence”, including Article 474 and Article 475. Article 474 paragraph (3) formulates that every person who, due to his negligence, causes the death of another person, shall be punished with imprisonment for a maximum of five years or a maximum fine of category V. This provision is a renewal of Article 359 of the old Criminal Code, with an editorial change from the phrase “because of his fault (his forgetfulness)” to “because of his negligence” to affirm that this offense is purely *culpa*-based, not *dolus*, so that it is systematically not united with the crime of murder in Chapter XXI.

This systematic separation is the key to answering the confusion of interpretation between Article 82 letter e and letter f of the new Criminal Procedure Code. The phrase "criminal act against the life of a person" in Article 82 letter f of the new Criminal Procedure Code, when read systematically with reference to the official nomenclature of the National Criminal Code, should be interpreted narrowly as a reference to the delinquency in Chapter XXI, namely the crime of intentional murder (*dolus*), not a criminal act that results in the death of a person due to forgetfulness as stipulated in Chapter XXIII. On the other hand, traffic crimes that result in loss of life as stipulated in Article 310 paragraph (4) of the Law on Road Traffic and Transportation, all of which are based on the negligence of the driver, are doctrinally closer to their kinship with Article 474 paragraph (3) of the National Criminal Code than Article 458 of the National Criminal Code. With this systematic-doctrinal reading, there is a fairly strong argument that Article 310 paragraph (4) of the Law on Road Traffic and Transportation is not included in the scope of the exemption of Article 82 letter f of the new Criminal Code, because the offense is substantively a crime of forgetfulness (Chapter XXIII), not a crime against life in the technical-juridical sense referred to in Chapter XXI of the National Criminal Code, so that the only relevant clause to assess its eligibility for *restorative justice* is Article 82 letter e, which expressly excludes the exemption of criminal threats of five years or more if the offense is born from forgetfulness.

However, this systematic reading is not the only possible interpretation. Grammatically literally, the phrase "criminal acts against human life" in Article 82 letter f can still be read more broadly, that is, it includes any criminal act that results in the loss of human life regardless of the basis of the mistake (*dolus* or *culpa*), because the new Criminal Procedure Code itself does not provide an official explanation (*memorie van toelichting*) that explicitly limits the scope of letter f in certain chapters of the National Criminal Code. This absence of an official explanation leads to a void of interpretation guidelines, and in turn opens up a wide discretion for investigators and public prosecutors to choose one of the two readings according to the needs or interests of handling cases. This condition directly explains why in practice, as will be further described, most traffic accident cases resulting in death are still resolved through restorative channels, although textually Article 82 letter f can be interpreted broadly to exclude it; law enforcement officials in the field generally tend to use systematic readings that focus on the nature of *culpa* and their doctrinal kinship with Article 474 of the National Criminal Code, rather than literal readings that focus solely on the consequences of loss of life. This normative interpretation gap is the root of the disharmony between the juridical restrictions in the new Criminal Procedure Code and the practice of *restorative justice* law enforcement against fatal traffic crimes.

At the normative level, before the enactment of the new Criminal Procedure Code, the position of *restorative justice* in Indonesia still rested on the internal regulations of each law enforcement institution. The police regulated it through the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, which gives investigators the authority to stop the investigation if a peace agreement has been reached between the perpetrator and the victim by meeting a number of conditions, such as not causing public unrest and the existence of a peace statement from the parties. Meanwhile, the Prosecutor's Office regulates a similar mechanism at the prosecution stage through the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Kristanto, 2022), which requires, among other things, that the suspect has committed a criminal act for the first time, the threat of imprisonment for less than five years, losses below a certain value, and that there has been a return to the original state. The presence of Articles 79 to 88 of the new Criminal Procedure Code basically raises the original internal and sectoral arrangements into the law, thus providing a stronger and uniform legal basis for all law enforcement officials.

Application of Restorative Justice to Traffic Offenses Resulting in Loss of Life

The *restorative justice* approach is an alternative to criminal case resolution that shifts the focus from mere punishment to a process of dialogue and mediation to achieve a fair and balanced agreement. This paradigm aims to restore the state and social relations as before the crime occurred, by involving the perpetrator, the victim, the families of both parties, and related communities (Nurwianti, 2018). In the context of traffic accidents, this approach becomes significant given that most accidents occur due to negligence without an element of intentionality, so relationship restoration and compensation are often more needed than punishment (C. P. Putri & Pratiwi, 2023). Traffic crimes that result in loss of life are regulated in Article 310 paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation, which threatens the perpetrator with a maximum prison sentence of six years. This criminal threat is above the five-year limit as required by Article 80 of the new Criminal Procedure Code, so textually this case should be included in the category that is excluded from the restorative justice mechanism according to Article 82 letters e and f. However, in practice, many cases with this qualification are actually resolved through a *restorative justice* approach, as shown by various case studies in various police and prosecutor's jurisdictions in Indonesia (Hamzah, 2018). The gap between restrictive normative arrangements and widespread law enforcement practices is at the heart of the problem in the application of restorative justice in fatal traffic crimes.

A study on the settlement of traffic accidents in Jember Regency, for example, shows that almost all cases, ranging from 98 percent of those entered in the range of 2021 to 2023, were actually resolved through a restorative justice mechanism and not through a formal judicial process (Ramadhani & Suyatna, 2024). A similar tendency can also be seen from the practice in the Garut Resort Police, where the restorative justice stages are carried out through case identification, mediation between the perpetrator and the victim or the victim's family, the preparation of a peace agreement, and the supervision of the implementation of the agreement, by involving community leaders as mediators (Fikarudin & Sumanto, 2025). This practice also occurs at the prosecution stage, for example in the handling of traffic accident cases in the jurisdiction of the Denpasar District Attorney's Office, which stops the prosecution after a peace agreement is reached between the perpetrator and the victim based on Attorney General Regulation Number 15 of 2020 (Yudha et al., 2023).

The high settlement rate through *restorative justice* shows that this approach is felt to provide a sense of justice for the parties compared to the formal judicial process which tends to be long, costly, and does not necessarily recover the material and immaterial losses suffered by the victim. *Restorative justice* in traffic accident cases is also considered more relevant considering the character of the criminal act which is culpa (negligence), not dolus (intentionality), so that the severed relationship between the perpetrator and the victim is more likely to be restored through the peace process than in criminal acts committed with malicious intent (N. S. Putri & Tajudin, 2015). From the perspective of *the theory of reintegrative shaming* developed by Braithwaite, this approach is also theoretically more effective in suppressing the recurrence of violations than the stigmatizing judicial process, because it places the problem, not the perpetrator's person, as the center of the solution, so that the perpetrator can still be reintegrated honorably into society.

However, the application of restorative justice to cases that result in loss of life cannot be done absolutely. The termination of investigations and prosecutions must still take into account a number of criteria, such as the level of public unrest, the history of the perpetrator, as well as the voluntariness and balance of bargaining positions between the perpetrator and the victim in the peace process, so that this mechanism is not abused as a means for perpetrators who have greater economic resources to escape criminal responsibility, while the victim's family who is in a weak position feels pressured to accept a disproportionate peace

(Rahmawati, 2022). This concern is in line with the emphasis of restorative justice theory itself that the legitimacy and effectiveness of the restorative process depends heavily on the voluntariness and equality of position of the parties, not on unilateral pressure from those in a stronger position. Thus, the consistency between the normative restrictions in Article 80 and Article 82 of the new Criminal Code and the practice of settlement in the field, which has been expanding beyond these limits, is a fundamental issue that needs further attention in the reform of traffic criminal law policy in Indonesia.

Challenges and Directions of Criminal Law Policy Reconstruction

There are at least three main challenges in the application of *restorative justice* to traffic crimes that result in the loss of lives. First, the absence of a legal umbrella at the legal level makes this mechanism vulnerable to lawsuits and is not uniform between jurisdictions. This vulnerability is even more evident when it is observed that the restorative justice arrangements in Articles 79 to 88 of the new Criminal Procedure Code have not fully answered this problem, because a number of people consider that the norms in the new Criminal Procedure Code are actually more concise and less detailed than the technical arrangements that have previously been developed through Police Regulation Number 8 of 2021 and Supreme Court Regulation Number 1 of 2024, thus causing confusion about which norms should be the main reference for law enforcement officials in the field. This condition confirms that the rise in the status of restorative justice regulation from internal regulations to laws does not in itself guarantee certainty and uniformity of implementation, if it is not accompanied by adequate harmonization between umbrella laws and implementing regulations under them.

Second, there is no standard criterion regarding the limit of the value of losses, the number of victims, or the level of negligence that can be categorized as worthy of being resolved through *restorative justice*, so its application still depends heavily on the subjective assessment of investigators and prosecutors. This problem is not just a theoretical concern. A study on the application of restorative justice in heavy traffic accident cases at the Central Jakarta Metro Resort Police found that the Circular Letter of the National Police Chief Number 8 of 2018, which was a reference at that time, did not explicitly accommodate cases that caused human casualties, so investigators in the field must interpret for themselves whether a fatal accident case deserves to be resolved restoratively or not (Amin et al., 2020). The absence of such measurable parameters has the potential to cause disparities in the handling of factually similar cases in different jurisdictions, depending on the interpretation of each investigator or prosecutor, and in turn can erode public trust in the consistency of law enforcement.

Third, *restorative justice* has the potential to ignore the public aspect of criminal accountability. In fact, the purpose of punishment in modern criminal law policy is not only oriented towards retribution, but also on community protection, *general prevention*, and restoration of the balance disturbed by criminal acts (Arief, 2005). Therefore, settlement through peace alone without paying attention to these aspects risks reducing the function of criminal law as a means of protection for the public at large, especially in cases that result in the death of more than one person or involve elements of gross negligence. These three challenges are essentially interrelated: the absence of an adequate legal umbrella widening the discretion space of the apparatus, the discretionary space that is not limited by standard criteria triggers disparities in implementation, and these disparities ultimately threaten the function of criminal law as an instrument for the protection of the public in general.

To overcome these challenges, it is necessary to take steps to reconstruct criminal law policies that place *restorative justice* in a stronger legal framework, including through explicit arrangements in the law on road traffic and transportation or in the Criminal Procedure Code, accompanied by measurable criteria regarding the type and severity of cases that can be resolved through this channel (Isman, 2026). One of the relevant reconstruction proposals to

consider is a settlement model that places reform on three dimensions at once: the substantive dimension, through the harmonization of the Law on Road Traffic and Transportation with the purpose of criminalization in Article 51 and Article 54 of the National Criminal Code; the structural dimension, through the establishment of a penal mediation unit specifically to handle traffic accident cases; and the cultural dimension, through strengthening the capacity of law enforcement officials and public education about the limits and goals of restorative justice. These three dimensions are actually mutually reinforcing: substantive reform without institutional strengthening will be difficult to implement consistently, while institutional strengthening without public education risks generating social resistance when restorative justice is applied to cases that cause fatalities.

The policy also needs to ensure that the peace process is carried out voluntarily, without pressure, and supervised by law enforcement officials so that the rights of victims and victims' families to proper recovery are still fulfilled, in line with the spirit of the Circular Letter of the Deputy Attorney General for General Crimes on the implementation of the termination of prosecution based on restorative justice as a form of legal certainty in its implementation in the field. This kind of supervision is important not only to prevent abuse by perpetrators who have a stronger bargaining position, as described in the previous section, but also to ensure that restorative justice does not turn into a mere mechanism to speed up the resolution of cases without actually recovering the victim's losses. It is in this context that the proposal to establish a restorative justice house or penal mediation unit at the prosecutor and police levels becomes relevant, as an institutional space that allows supervision to run institutionally, not solely relying on the good faith of each investigator or prosecutor (Sagalane & Handayani, 2025).

Therefore, the direction of criminal law policy in the future should not place *restorative justice* and conventional criminalization as two poles that eliminate each other, but as two complementary instruments. *Restorative justice* can be positioned as a preferred resolution path for cases with a level of minor to moderate negligence and a decent recovery has been achieved for the victim, while the formal justice process is maintained as a last resort for cases that have a wider social impact or involve repeated gross negligence. With this clear division of roles, criminal law policy in the field of traffic can simultaneously maintain the efficiency of case resolution, provide room for recovery for victims and perpetrators in good faith, and maintain the function of criminal law as an authoritative *ultimum remedium* for cases that really endanger the common interest.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Following the enactment of the National Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code, the position of restorative justice in Indonesia's criminal law policy has undergone significant juridical strengthening, evolving from being merely regulated through the internal rules of law enforcement institutions to being expressly recognized at the statutory level. Restorative justice is now a direct manifestation of the purposes of sentencing as stipulated in Articles 51 and 54 of the National Criminal Code and has been incorporated into the authority of investigators and public prosecutors through Articles 79 to 88 of the new Criminal Procedure Code, subject to the limitations set forth in Articles 80 and 82. However, this strengthening of its normative status has not been accompanied by adequate technical clarity, particularly concerning the relationship between Article 82 letter e and Article 82 letter f of the new Criminal Procedure Code, whose wording is not entirely consistent when applied to negligent criminal offenses resulting in fatal consequences.

With regard to traffic offenses resulting in death as stipulated in Article 310 paragraph (4) of the Law on Road Traffic and Road Transportation, this study identifies a fundamental

gap between normative restrictions and law enforcement practices. Through a systematic examination of the structure of the National Criminal Code, it can be concluded that intentional homicide offenses (*dolus*) are regulated separately in Chapter XXI concerning Crimes against Life and the Fetus (Articles 458–465), whereas the death of a person caused by negligence (*culpa*) is regulated separately in Chapter XXIII concerning Crimes Resulting in Death or Injury Due to Negligence (Articles 474–475). This systematic distinction provides a strong doctrinal basis for arguing that Article 310 paragraph (4) of the Law on Road Traffic and Road Transportation, which is based on the driver's negligence, is more appropriately classified as a negligent offense subject to the exception clause under Article 82 letter e of the Criminal Procedure Code, rather than as a “criminal offense against the life of a person” within the technical-juridical meaning of Article 82 letter f. However, because the new Criminal Procedure Code does not provide an official elucidation expressly confirming these limitations, a broader grammatical and literal interpretation remains possible. This interpretive gap, in turn, has resulted in disparities in law enforcement practices across jurisdictions, as reflected in the high rate of restorative settlements in similar cases in Jember Regency, at the Garut Police Resort, and at the Denpasar District Prosecutor's Office, without a uniform and sufficiently clear legal basis.

This normative gap is further exacerbated by three interrelated challenges: the absence of a detailed and uniform legal framework following the transition from internal regulations to statutory provisions; the absence of standardized criteria regarding the severity of cases suitable for restorative resolution; and the risk of undermining the public dimension of criminal accountability if settlement through restorative mechanisms is implemented without adequate supervision. Based on these findings, future criminal law policy should position restorative justice and conventional criminal prosecution as complementary instruments within the framework of *ultimum remedium*, rather than as mutually exclusive alternatives. The necessary reconstruction should encompass three dimensions: substantive reform, through the harmonization of the Law on Road Traffic and Road Transportation with the National Criminal Code, accompanied by an explicit clarification of the position of Article 310 paragraph (4) of the Law on Road Traffic and Road Transportation within the exception scheme under Article 82 of the Criminal Procedure Code; structural strengthening, through the establishment of penal mediation units within the police and prosecution services; and cultural strengthening, through enhancing the capacity of law enforcement officials and educating the public regarding the limits and objectives of restorative justice. Accordingly, restorative justice may be prioritized for cases involving mild to moderate negligence in which the victim's losses have been adequately redressed, while formal criminal proceedings should remain available as a last resort for cases causing significant social impacts or involving gross negligence, thereby preserving the function of criminal law as an instrument for protecting society.

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