



Legal Harmonization in the Era of the New Indonesian Penal Code: A Study on the Application of Restorative Justice in Traffic Accidents

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Abstract

Background. This study is grounded in the shifting paradigm of punishment within the New Indonesian Penal Code, which emphasizes a restorative justice approach, amidst the continued dominance of a formalistic framework under the Traffic and Road Transportation Law, particularly in cases of negligence resulting in death.

Aims. The study aims to analyze the differences in legal regulation and the implications of applying restorative justice within these two legal regimes.

Methods. The research employs a qualitative approach using normative legal research methods, relying on document analysis of statutory regulations, legal principles, sentencing principles, and the new paradigm introduced by the Indonesian Penal Code.

Result. The findings reveal a normative inconsistency between the Traffic Law, which restricts restorative justice based on the severity of criminal sanctions, and the New Penal Code, which allows for restorative approaches based on the nature of the offense and specific circumstances, including reconciliation and compensation.

Conclusion. It is concluded that the formalistic approach in law enforcement practices has not yet fully aligned with the restorative direction of contemporary penal reform.

Implementation. The study highlights the need for regulatory harmonization and adaptive law enforcement policies that are more responsive to the principles of substantive justice and modern penal paradigms.

Keywords: Restorative Justice, Normative Conflict, Indonesian Penal Code, Traffic Accidents.



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INTRODUCTION

The development of modern criminal law reflects a paradigm shift from a retributive to a restorative approach, emphasizing the restoration of relationships among offenders, victims, and society. This shift is particularly relevant in the Indonesian context, especially following the enactment of the New Indonesian Penal Code under Law Number 1 of 2023, which

introduces a new orientation in the sentencing system. However, law enforcement practices continue to demonstrate a strong reliance on formalistic approaches, particularly in traffic-related offenses resulting in death. This condition raises questions about the consistency between evolving legal norms and their practical implementation, thereby making this study important for understanding the dynamics and direction of criminal law reform in Indonesia (Braithwaite, 2020; Daly, 2020).

Previous studies have extensively examined the application of restorative justice within criminal justice systems, both globally and nationally. Dünkel et al. (2022) demonstrate that restorative justice has increasingly been adopted across various legal systems as an alternative to conventional punishment, particularly in non-intentional offenses. Similarly, Sulistyono and Nugroho (2021) highlight that the implementation of restorative justice in Indonesia remains constrained by a fragmented and sectoral regulatory framework that lacks systematic integration. Furthermore, Arief (2022) argues that the reform of the Indonesian Penal Code represents a significant milestone in shifting the orientation of punishment toward a more humanistic and justice-oriented approach. Nevertheless, most of these studies have not specifically addressed the normative conflict between the New Penal Code and sectoral laws in the context of the implementation of restorative justice.

The novelty of this study lies in its focus on analyzing the inconsistency of norms between the New Indonesian Penal Code and the Traffic and Road Transportation Law in determining the boundaries for applying restorative justice, particularly in cases of negligence resulting in death. This study not only examines legal norms textually but also connects them with legal principles, modern sentencing theories, and the evolving paradigm of Indonesian criminal law. Accordingly, this research is expected to contribute theoretically to the development of criminal law scholarship, particularly in relation to regulatory harmonization and the implementation of restorative approaches within the criminal justice system. Based on this background, the research questions addressed in this study are: (1) how negligence resulting in death is regulated under the Traffic and Road Transportation Law; (2) how restorative justice is regulated and conceptualized within the New Indonesian Penal Code; and (3) what implications arise from the differences in these regulatory frameworks for the application of restorative justice in law enforcement practices in Indonesia.

This study aims to analyze and explain the legal framework governing negligence in traffic offenses and the application of restorative justice within the context of the New Indonesian Penal Code, while also identifying the normative implications arising from

differences in regulation. Furthermore, this research is expected to contribute to the development of criminal law policy that is more adaptive to restorative paradigms and to serve as an academic reference in efforts to harmonize regulations within Indonesia's criminal justice system.

LITERATURE REVIEW

The concept of restorative justice (RJ) has evolved as an alternative approach within the criminal justice system, emphasizing the restoration of relationships among offenders, victims, and society. A number of international studies indicate that RJ is effective in reducing recidivism and enhancing victim satisfaction by providing greater opportunities for participation compared to conventional justice systems (Daly, 2020; Dünkel et al., 2022). However, criticisms of RJ have also emerged, particularly regarding the potential power imbalance between offenders and victims in reconciliation processes, as well as the risk of the "privatization of justice," which may undermine the state's role in law enforcement (Braithwaite, 2020). In practice, RJ tends to be more successfully applied in minor and non-intentional offenses, while its application in cases involving loss of life remains contested, especially with regard to its moral and legal boundaries.

Within the framework of sentencing theory, the shift from a retributive to a restorative approach represents a broader reform in modern criminal law that emphasizes a balance between the interests of offenders and victims. Studies by Tonry (2021) and Piquero (2022) suggest that overly punitive systems do not always achieve substantive justice, particularly in cases involving negligence (*culpa*). In Indonesia, the reform embodied in the New Penal Code reflects this paradigm shift by incorporating broader sentencing objectives, including restoration and conflict resolution. Nevertheless, several studies have criticized that such normative changes have not been fully accompanied by the readiness of law enforcement institutions and adequate legal infrastructure, thereby posing challenges for effective implementation in practice (Arief, 2022).

Studies on the implementation of RJ in Indonesia indicate notable developments, particularly through internal regulations of law enforcement agencies such as police regulations and prosecutorial guidelines. Research by Sulistyo and Nugroho (2021) and Hiariej (2023) shows that RJ has begun to be applied in various criminal cases, although it remains limited to specific offenses with relatively low penal sanctions. A key criticism concerns the persistence of a formalistic approach, whereby the application of RJ is heavily dependent on the statutory

penalty threshold rather than on the nature of the offense or the need for victim restoration. In practice, this has led to inconsistencies, particularly in cases that substantively meet the principles of RJ but fail to satisfy administrative requirements, thereby hindering the realization of restorative justice.

On the other hand, issues of normative conflict and legal harmonization have become central concerns in contemporary criminal law scholarship. The literature suggests that inconsistencies between general and sectoral laws often lead to legal uncertainty and inconsistencies in law enforcement (Berman, 2021; Bedner, 2020). In the Indonesian context, there is still limited research that specifically examines the conflict between the New Penal Code and sectoral laws such as the Traffic and Road Transportation Law in the application of RJ. Most existing studies remain general in nature and have not directly engaged with concrete cases, particularly those involving negligence resulting in death. Therefore, this study is essential to fill this gap by providing a more in-depth analysis of the interaction between legal norms, principles, and law enforcement practices within the framework of criminal law reform in Indonesia.

METHOD

This study employs a qualitative approach, drawing on normative legal research (doctrinal legal research), focusing on the analysis of applicable legal norms and conceptual constructions within the Indonesian criminal law system. A qualitative approach is adopted, as this research does not aim to measure phenomena statistically but rather to understand, examine, and interpret the dynamics of legal regulation, particularly regarding the application of restorative justice in cases of negligence resulting in death.

The normative legal method in this study is conducted through an examination of primary, secondary, and tertiary legal materials. Primary legal materials include relevant statutory regulations, namely Law Number 22 of 2009 on Traffic and Road Transportation and the New Indonesian Penal Code as stipulated in Law Number 1 of 2023. In addition, this research also reviews guidelines for the application of restorative justice within the Indonesian criminal justice system, including those issued by police and prosecutorial authorities, as part of the broader law enforcement policy framework.

Secondary legal materials include scholarly literature, such as textbooks, national and international journal articles, and prior research relevant to restorative justice, criminal law reform, and criminal liability in negligence-based offenses. Meanwhile, tertiary legal materials

are used as supporting references, such as legal dictionaries and encyclopedias related to the legal terminology employed in this study.

Data collection is carried out through a documentation study, involving the identification, classification, and analysis of various legal documents and relevant literature. This study also examines legal and sentencing principles, as well as the new paradigm introduced by the Indonesian Penal Code, particularly in relation to the shift from a retributive to a restorative approach. Data analysis is conducted qualitatively using the statutory, conceptual, and case approaches. The statute approach is applied to examine the consistency and coherence of norms across applicable regulations. The conceptual approach is used to analyze the legal principles and doctrines underlying the application of restorative justice. Meanwhile, the case approach is employed to analyze the application of legal norms in the concrete case of a traffic accident that forms the subject of this study.

Through these approaches, this research aims to identify, examine, and explain the differences in regulatory frameworks and the normative implications of the application of restorative justice within the Indonesian criminal law system, particularly in relation to the interaction between the New Penal Code and sectoral legislation.

DISCUSSION

Juridical Facts of the Traffic Accident at Cipularang Toll Road KM 92

A chain-reaction traffic accident occurred at KM 92 of the Cipularang Toll Road on Monday, November 11, 2024. The incident involved approximately 17 to 21 vehicles colliding consecutively and piling up. Based on data obtained from police investigations, the accident resulted in one fatality and approximately 28 to 30 individuals sustaining injuries of varying severity. The accident occurred during heavy rainfall on a descending roadway. The investigation revealed that the truck driven by Rouf experienced brake failure while traveling downhill. In addition to this technical factor, the driver was also found to have applied improper driving techniques, namely using a high gear on a descending slope, which contributed to the loss of vehicle control.

In the legal process, the truck driver was designated as a suspect by the police on the grounds of negligent driving resulting in the death of another person. The conduct was charged under Article 310, paragraph (4) of Law No. 22 of 2009 on Traffic and Road Transportation. During the proceedings, the driver stated that he was not drowsy at the time of the incident and confirmed a brake failure, which caused panic and left him unable to control the vehicle.

Despite efforts to stop the vehicle, he was unsuccessful, ultimately resulting in the chain collision.

In addition, efforts were made to resolve the matter outside the court through a settlement approach. The transportation company employing the driver provided compensation to the victims, including both the family of the deceased and those who were injured. This effort was accompanied by the driver's request to resolve the case through a restorative justice mechanism. Nevertheless, the legal process proceeded to trial. This was based on applicable legal provisions, particularly those concerning the limitations on the application of restorative justice to offenses with certain penalty thresholds. Ultimately, the court imposed a three-year sentence on the driver as a form of criminal liability for the incident.

Regulation of Negligence Resulting in Death under the Traffic and Road Transportation Law

The regulation of negligent acts in traffic resulting in death is governed under Law Number 22 of 2009 concerning Traffic and Road Transportation. This provision is specifically stipulated in Article 310 paragraph (4), which provides that any person who, due to negligence in operating a motor vehicle, causes the death of another person shall be subject to a maximum imprisonment of six years and/or a fine as stipulated by the law. Based on this provision, offenses arising from traffic accidents resulting in death are classified as acts of negligence (*culpa*) carrying relatively serious penal consequences. The maximum penalty of six years places such offenses within a category of significant gravity under Indonesian criminal law.

In practice, the application of restorative justice (RJ) mechanisms generally refers to internal regulations of law enforcement agencies, which stipulate that RJ may be applied only to offenses carrying a maximum penalty of no more than five years. This requirement is a key factor in determining whether a case may be resolved outside the formal criminal justice process. Accordingly, given that the Traffic Law prescribes a maximum penalty of six years for negligence resulting in death, such cases do not meet the administrative criteria for the application of restorative justice as currently practiced. Consequently, cases of this nature are processed through the conventional criminal justice system, proceeding to trial and judicial decision.

Restorative Justice under the New Indonesian Penal Code and Its Applicability to Negligence-Based Offenses

The New Indonesian Penal Code, as enacted under Law Number 1 of 2023, introduces a paradigm shift in Indonesia's sentencing system, moving beyond a purely retributive approach to incorporate restorative justice principles. This transformation is reflected in provisions on sentencing objectives and guidelines, which emphasize a balance among the interests of the offender, the victim, and society. Under the New Penal Code, the objectives of punishment include resolving conflicts arising from criminal acts, restoring social balance, and ensuring a sense of justice and security within society. Furthermore, sentencing guidelines allow judges to consider various factors, including the nature of the offense, the degree of culpability, the consequences of the act, and the possibility of reconciliation between the offender and the victim.

In line with this approach, there is normative space for the application of restorative justice in negligence-based offenses, including those resulting in serious harm such as death, provided certain conditions are met. These conditions include a settlement agreement between the offender and the victim or the victim's family, as well as the provision of compensation as a form of accountability for the harm caused. In the context of the traffic accident involving the truck driver, it was found that the victims or their families had accepted the settlement, and compensation had been provided by the transportation company employing the offender. Additionally, there is a dimension of corporate responsibility related to the vehicle's technical condition, particularly the brake failure that contributed to the accident.

Considering the provisions of the New Penal Code, which emphasize restorative approaches and take into account non-legal factors such as reconciliation and compensation, there exists a normative basis for applying restorative justice in cases involving negligence. This reflects an expansion of the sentencing approach, shifting from a purely punitive orientation toward one that prioritizes the restoration of relationships between offenders and victims.

Differences in the Regulation of Restorative Justice between the Traffic Law and the New Penal Code and Their Practical Implications

An examination of the relevant statutory provisions reveals differences in the regulation of restorative justice between Law Number 22 of 2009 on Traffic and Road Transportation and the New Indonesian Penal Code under Law Number 1 of 2023. The Traffic Law stipulates that negligent driving resulting in death is punishable by a maximum imprisonment of six years. In practice, this provision is linked to administrative limitations on the application of restorative justice, which require that eligible offenses carry a maximum

penalty of no more than five years. Consequently, offenses under Article 310 paragraph (4) of the Traffic Law are generally excluded from restorative justice mechanisms.

In contrast, the New Penal Code introduces a broader sentencing approach that emphasizes restoration and conflict resolution. Within this framework, restorative justice may be applied in negligence-based offenses by considering factors such as reconciliation between the offender and the victim, as well as the provision of compensation. This approach is not solely based on the severity of the statutory penalty but also takes into account the nature of the offense and the specific circumstances of the case. These differences indicate a divergence in the parameters used to determine the applicability of restorative justice. The Traffic Law primarily relies on the threshold of penal sanctions, whereas the New Penal Code expands the assessment to include restorative considerations and factual circumstances.

In practice, this divergence results in the non-application of restorative justice in traffic accident cases resulting in death, despite the existence of reconciliation and compensation. Law enforcement authorities continue to process such cases through formal criminal proceedings based on the provisions of the Traffic Law. This demonstrates that, in practice, sectoral legislation remains the primary reference in determining the applicability of restorative justice in traffic-related offenses.

This section demonstrates that the differences in regulation between Law Number 22 of 2009 on Traffic and Road Transportation (Traffic Law) and the New Indonesian Penal Code (Law Number 1 of 2023) are not merely technical variations but reflect a normative conflict within Indonesia's criminal law system. Article 310 paragraph (4) of the Traffic Law explicitly provides that negligence in driving resulting in death is punishable by a maximum of six years' imprisonment. In law enforcement practice, this provision is closely linked to restorative justice guidelines—regulated through internal instruments of law enforcement agencies, including police regulations and prosecutorial guidelines—which generally limit the application of restorative justice to offenses carrying a maximum penalty of no more than five years. Consequently, the case at hand does not administratively qualify for the application of restorative justice.

In contrast, the New Indonesian Penal Code introduces a new orientation that does not solely rely on the severity of statutory penalties but instead considers the nature of the offense and the broader objectives of punishment. The Code explicitly affirms that punishment is not merely intended to impose suffering on the offender but also to resolve conflicts, restore social balance, and promote a sense of justice for victims and society. Furthermore, the sentencing

guidelines provide judges with discretion to consider reconciliation between the offender and the victim, as well as compensation, as mitigating factors. This reflects a shift away from a purely retributive model toward a restorative paradigm that prioritizes recovery and social reintegration.

Within this framework, traffic accidents caused by negligence (*culpa*) differ fundamentally from intentional offenses (*dolus*). The absence of *mens rea* in the form of malicious intent is a crucial factor that theoretically places such acts within a category more suitable for restorative resolution, provided that the harm has been adequately addressed. In the present case, the existence of reconciliation between the offender and the victim, along with compensation provided by the employer company, indicates that substantive restoration has been achieved. From the perspective of the New Penal Code, such conditions constitute relevant considerations in determining a proportionate penal response.

On the other hand, the prevailing approach in law enforcement practice remains predominantly legalistic and formalistic, relying heavily on the statutory penalty threshold as the sole determinant of whether a case may be resolved through restorative justice. Such an approach risks overlooking the broader objectives of punishment as articulated in the New Penal Code. Moreover, reliance on a single parameter—namely the maximum statutory penalty—fails to adequately capture the complexity of criminal events, particularly in cases involving negligence and external contributing factors such as technical failures of the vehicle.

Furthermore, this case also raises issues of liability that extend beyond the individual driver to the corporate entity responsible for ensuring the operational safety of the vehicle. The occurrence of brake failure suggests a potential lapse in vehicle maintenance, which falls under the responsibility of the company. In contemporary criminal law, including within the framework of the New Penal Code, corporations are recognized as legal subjects capable of bearing criminal liability. Therefore, focusing liability solely on the driver risks neglecting the structural dimensions underlying the commission of the offense.

From the perspective of legal principles, this situation reflects a tension between the principles of *lex specialis derogat legi generali* and *lex posterior derogat legi priori*. While the Traffic Law, as a *lex specialis*, specifically regulates traffic-related offenses, the New Penal Code, as a more recent legal instrument, introduces a fundamental shift in the philosophy of punishment. In this context, systematic and teleological interpretation becomes essential to position the New Penal Code as the overarching framework for criminal law reform, guiding the interpretation and harmonization of sectoral legislation. Accordingly, the restriction on the

application of restorative justice based solely on statutory penalty thresholds under the Traffic Law warrants reconsideration within the broader objectives of punishment.

Finally, the principle of *ultimum remedium* further strengthens the argument that imprisonment should be regarded as a last resort in criminal law. In cases where reconciliation has been achieved, compensation has been provided, and there is no element of intent, the imposition of imprisonment as the primary response appears inconsistent with this principle. Therefore, the restorative approach embodied in the New Penal Code emerges as a relevant alternative for resolving such cases, reflecting substantive justice and marking the direction of Indonesia's criminal law reform toward a more responsive and restoration-oriented system.

CONCLUSION

Based on the findings and discussion, it can be concluded that there is a regulatory inconsistency between the Traffic and Road Transportation Law and the New Indonesian Penal Code in determining the limits on the application of restorative justice to negligence-based offenses resulting in death. The Traffic Law emphasizes the threshold of statutory penalties as a formal requirement, whereas the New Penal Code adopts a sentencing paradigm oriented toward restoration, balance, and conflict resolution. This condition reflects a normative tension between the principles of *lex specialis* and *lex posterior*, which, in practice, tends to sustain a formalistic approach, thereby hindering the application of restorative justice even when substantive conditions, such as reconciliation and compensation, have been met. Furthermore, the limited integration of the new paradigm introduced by the New Penal Code into law enforcement practices, as well as the insufficient consideration of corporate liability, underscores the need for regulatory harmonization and the adjustment of law enforcement policies to align more closely with the principle of *ultimum remedium* and the broader direction of criminal law reform toward substantive justice.

Implications

This study carries significant implications across academic, societal, national, and international dimensions. Academically, it advances criminal law scholarship by providing a critical analysis of normative conflict and the application of restorative justice within the framework of the New Indonesian Penal Code, while also opening avenues for further research on legal harmonization and modern sentencing paradigms. For society, the study promotes a broader understanding that criminal case resolution need not be exclusively oriented toward

imprisonment, but can instead prioritize restoration, reconciliation, and substantive justice for victims. At the national level, the findings highlight the urgency of harmonizing the New Penal Code with sectoral legislation such as the Traffic Law to ensure legal certainty and to support a more adaptive and responsive criminal law reform. At the international level, this study contributes to the global discourse on restorative justice in developing countries, particularly in addressing the challenges of integrating new legal paradigms with existing sectoral regulatory frameworks, thereby offering a reference for the development of more inclusive and restoration-oriented criminal justice policies.

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