

Settlement of Traffic Violations Using Criminal Sanctions and Restorative Justice Approaches



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ABSTRACT: Solution case criminal with draft *restorative justice* is something method new in solution case crime in Indonesia. Whereas in law customs in Indonesia have use method the since first to be habit with complete something problem with Street discussion for consensus. With a habit that becomes living values in the Indonesian nation discussion for consensus made mark in Pancasila State ideology, the 4th precepts discussion for consensus Becomes principle *restorative justice* in approach justice in solution case law. On Judgment Purworejo District Court Number 96/ Pid . Sus /2018/ Pn. Pwr . The Panel of Judges applies draft *restorative justice* in the decision on the case then cross, thing this considered could enforce justice and restore the litigants in case criminal then cross. As for formula discussed problem in study this about what be obstacles in application *restorative justice in the settlement process case then traffic that causes death and how application restorative justice in completion case criminal then traffic that causes Dead based on (Study Decision Number 96/ Pid.Sus /2018/ Pn.Pwr). Study this use method study law normative juridical or study law bibliography, the main data used are primary, secondary, and tertiary data. With approach study regulation legislation, cases, and approaches related conceptual with enforcement law and research role apparatus enforcer law to handling case then cross with approach restorative justice. So that expected solution case criminal with restorative justice could realize justice with more notice rights of victims, perpetrators and society.*

KEYWORDS: Restorative Justice, Case Criminal, Traffic.

I. INTRODUCTION

A. Background Behind

Indonesia is a country based on on law and constitution according to the 1945 Constitution contains broad meaning that includes dimensions legal, political and social economy. In dimensions the laws and ideals of the state based on law want implementation various principle law as principle legality, principle independence of the judiciary , principle equality right in the eyes law , principle that the 1945 Constitution is " *the supreme law of the land* ".¹ Implementation various principle law as the is aim create order and sense of justice as well as existence certainty law and benefit law in life society, nation and state. Development in the field of law, necessary directed towards the realization system law national values that are rooted in the values contained in Pancasila and the 1945 Constitution, includes: development Theory law, apparatus enforcer law as well as facilities and infrastructure law in skeleton development of a state of law that holds firm supremacy law good *rule of law* for realize order and justice.

In enforcement law there is a number of related institutions with different duties and authorities, namely institution Police, Prosecutors, Courts and Community Institutions by structural institution police is institution front or first in system Justice criminal , then Prosecutors , Courts , Correctional Agencies both institutional as well as non- institutional .²

For reach objective development national development transportation own very important position strategic in development nation for fulfillment need mobility whole sector and for reach all over Indonesia. Realize role great transportation important for development nation, then then traffic and transportation Street should set in one system transportation national by integrated to be able realize availability service matching transportation with level need then traffic and service orderly, safe , safe , comfortable , fast , precise , regular , and smooth transportation .

As per the latest data from the Central Statistics Agency (BPS) show population whole more vehicles in Indonesia from 133 million units in 2019. Since two year then, increment total vehicle increase about 5 percent. Data per year 2019 says total vehicle rises to 133,617,012 units from previously in 2018 there were 126,508,776 units. In 2019, BPS recorded addition vehicle as much

¹ Mieke Komar et al, 1999, " *Mochtar Kusumaatmadja : Education and Statesman , Collection of Works Write Honoring 70 Years of Prof. Dr. Mochtar Kusumaatmadja , SH, LLM* " , (Alumni, Bandung), p . 246.

² Muladi , 1995, " *Kapita Selecta ; System Justice Criminal* " , (Publishing Agency University Diponegoro , Semarang), p . 4.

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7,108,236 units or up 5.3 percent. Meanwhile, the number population vehicles in 2018 rose 5.9 percent compared to 2017 data, namely as many as 118,922,708 units.³

Following each total increase vehicle motorized based on types, cars, buses and bicycles motorcycle:

- a. Passenger Cars; Amount car passenger reached 11.6 percent or 15,592,419 units of the total vehicles in 2019. Figures in 2019 experienced spike compared to year 2018, that is 14,830,698 units and in 2017 there were 13,968,202 units.
- b. Car Goods; Data Progress Amount Vehicle Motorized According to Type ' collected from the Police Traffic Corps also includes car goods. Type car goods recorded as much 5,021,888 units in 2019 or equivalent to 3.7 percent of the total population vehicles in 2019.
- c. Buses; Type registered bus vehicle as much 231,569 units in 2019. Total this 0.17 percent equivalent of the total vehicles. In 2018, the number of buses reached 222,872 units, and in 2017 there were 213,359 units.
- d. Motorcycles; based on data as of 2019, motorcycles are the type most vehicles. Recorded number of motorbikes 112,771,136 units or about 84 percent of the total vehicles. In 2018, the number of motorcycles was 106,657,952 units, and in 2017 there were 100,200,245 units."⁴

Information data this latest released beginning February 2021, in 2020 BPS has not release population data vehicle. However, if refers to sales data Combined Industry Vehicle Motorized Indonesia (Gaikindo) and Associations Industry Indonesian Motorcycle (AISI) 2020, population vehicle predictable no experience increase significant because effect Pandemic *Corona Virus* (COVID-19).

With develop so fast ownership vehicle motorized in Indonesia must be together with development then traffic and transportation paved road in one unity system, done with integrate and dynamic the elements which consist of from network transportation road, vehicle along with the driver, as well such rules, procedures and methods appearance so that come true a complete, empowered and successful totality use. maintenance then traffic and transportation Street need held by continuous and continuous upgraded so that the power reach and service more large to community, with notice big interest general and ability community, sustainability environment, coordination Among authority center and region Among agencies, sectors, and related elements as well as creation security and order in organize then traffic and transportation walk, all at once realize system transportation reliable and integrated national.

Whole Thing the listed in one complete law i.e. inside Constitution Number 22 of 2009 concerning Road Traffic and Transportation. Constitution this replace Constitution Number 14 of 1992 concerning Traffic and Road Transport because already no in accordance again with progress, progress knowledge knowledge and technology, and also not arranged in one unity system which is part from transportation by whole. In Constitution this is also set about rights, obligations as well as responsibility of providers service to loss party third as consequence from maintenance transport road. In its development, then cross Street could Become problem for human, because the more a lot moving human _ or move around from one the place place other, and more big people who use means transportation transport way, then Thing this is what will influence tall low number accident then cross.⁵

At almost all accident then the traffic that happened among others caused by factors fatigue, carelessness, lack be careful, condition less vehicle good, and boredom experienced driver. No excessive all accident then cross involving vehicle personal nor vehicle general caused by factors drivers, pedestrians, vehicles, facilities and infrastructure, officers / enforcers law in then cross road. Factor accident then frequent traffic occur because *human error* (factor human). Completion process case traffic outside the court that became reason death somebody that is driver less vehicle careful or negligent, lacking alert, less use memory or mistake or if he no alert, orderly or mistake or if he no alert, orderly or remember, events that no will occur or could prevented.⁶

Based on Constitution Number 22 of 2009 concerning Road Traffic and Transportation Article 1 paragraph (24):

"Accident then cross is something events on the road that are not suspected and not intentional involving vehicle with or without user Street then traffic that results in human casualties and /or loss treasure thing."⁷

Based on regulation the laws in force in Indonesia, basically things criminal no could solved outside court, including case criminal accident then cross as provision Article 230 of the Law Number 22 of 2009 concerning Traffic and Road Transportation, affirmed, " The case " accident then cross as meant in Article 229 paragraphs (2), (3) and (4) are processed with court proceedings criminal in accordance with provision regulation legislation."⁸ Based on provision the should solved through system Justice criminal *justice* system. As well as in system law Indonesian criminal settlement case criminal still many done with application *retributive justice*. Approach *retributive justice* this need reformed with something alternative solution problem criminal with emphasis on

³ Source Urip Cargo, " Central Bureau of *Statistics Data Census Amount Vehicle Motorized in Indonesia Reaches 133 Million Units* ", <https://sourceuripcargo.com/sensus-bps-sum-kendaraan-bermotor-di-indonesia-achieved-133-juta-unit/> . Retrieved December 1, 2021 .

⁴ *Ibid.*

⁵ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation .

⁶ Marjan Miharja, " *Diversion and Restorative Justice in Handling Accident Traffic* ", p . 5.

⁷ *Ibid.*

⁸ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation, Article 230.

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recovery problems / conflicts and taking balance in public that is with *restorative justice*.⁹ With approach *restorative justice* expected could realization Restoring justice that is something approach focused justice to need than victims, perpetrators crime , and also involves role as well as society , and not solely fulfil provision law or solely dropping criminal as correct on draft theory criminal *retributive justice* (approach justice involving the state and actors in the formal judicial process). *Restorative justice* by general aim for make perpetrator return state to condition again. Justice that is n't just drop balanced sanctions for perpetrator but also pay attention justice for victims.¹⁰

As Beniharmony Harefa think that:

“Truth” solution case criminal through *restorative justice* this see conflict from the perspective of victims, perpetrators and society. *From the victim 's perspective*, point problem in dropping penalty specifically penalty criminal (punishment) is not lies in weight lightness penalty as shape release reply feud to offender, but for repair or restore loss or injuries sustained caused by crime or violation law criminal. In draft Justice formal punishment for in this case, the interests of the victims are represented by the state in Thing Justice Indonesian Criminal Code by the Prosecutor General. Victim only as passive party in complete the conflict with perpetrator. Whereas mechanism solution case criminal with approach justice restorative, the victim is given broad role. *From perspective perpetrator*, through mechanism with approach restorative, sanctions given character corrective. It means no from big small sanctions, however for correct error perpetrator as shape the responsibility on the damage balance arrangement society kat who has he did. Sanctions are also rehabilitative, so that give right opportunity for perpetrator for repair himself, in the future day no repeat same error. Whole the above efforts, it is hoped will boils down to justice restorative, relationship perpetrators, victims and society can restored return, result the resulting conflict. Approach justice match tif , rehabilitative and restorative , presumably could answer all the damage caused , so that recovery balance arrangement public could terwu jud. *From perspective society*, then completion case criminal with approach justice restorative, put society in position no just as participant passive. Society is given more roles wide, for monitor implementation accountability perpetrator, who can form various shape as repair damaged facility , return goods, fulfillment fine custom , and so on . In study this writer will discuss solution case with approach *restorative justice* this in the example case then cross.”¹¹

In progress institutions enforcer law start apply right draft solution case criminal with draft *restorative justice* as Police publish Regulation State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative. ¹²Also institutions prosecution attorney Republic of Indonesia is here give attention to solution case criminal through provision Regulation attorney Republic of Indonesia Number 15 of 2020 concerning Termination Prosecution Based on Justice Restorative. ¹³And the Supreme Court issues the Director 's Decree General of the Judiciary General Supreme Court of the Republic of Indonesia Number 1961/DJU/SK/PS.00/12/2020 Regarding Enforcement Guidelines Application Restorative Justice (*Restorative Justice*).¹⁴

As studies the case that became discussion the author’s research make base in this writing is, Verdict Purworejo District Court Number 96/ Pid.Sus /2018/ Pn.Pwr with Defendant Yayat Suyatman Bin Suminta. About accident then traffic that causes death, verdict this Becomes ingredients main in making thesis this. how much indictment to Defendant Yayat Suyatman Bin Suminta guilty To do act criminal because his negligence result in Accident Traffic that results in the death of another person as violate Article 310 Paragraph (4) Law Number 22 of 2009 concerning Road Traffic and Transportation. With indictment criminal to Defendant criminal prison for 7 (seven) months reduced During Defendant detained, with order Defendant still on hold.¹⁵

So based on the facts presented above, cause not enough maximum implementation Solution Violation Traffic Using Penalty Crime by the authorities enforcer law good Police, Prosecutors Prosecutor General as well as Judges. Based on Thing above writer interested for to do study with title. “**Solution Violation Traffic Using _ Penalty Crime and Approach Restorative Justice** ”.

⁹Muhammad Rusli , 2006, “ *Portrait of the Indonesian Courts of Justice* ” , (Rajawali Press, Jakarta) , p . 180.

¹⁰ Eryantouw Wahid, 2009, " *Justice " Restorative and Judiciary Conventional in Law Criminal* " , (University Trisakti , Jakarta), p . 9.

¹¹ Beniharmony Harefa , “ Justice custom Nias and Justice Restorative ” , published in the *Journal Communication Law* Ganesha University of Education Singaraja 40 , Volume 3, Number 1, February 2017 , page 9

¹² Republic of Indonesia, Regulations State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative .

¹³ Republic of Indonesia, Regulations attorney Republic of Indonesia Number 15 of 2020 concerning Termination Prosecution Based on Justice Restorative .

¹⁴ Republic of Indonesia, Director 's Decree General of the Judiciary General Supreme Court of the Republic of Indonesia Number 1961/DJU/SK/PS.00/12/2020 Regarding Enforcement Guidelines Application Restorative Justice (*Restorative Justice*).

¹⁵ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec_1affbe23b47078eb3a_57.html . Retrieved December 1 , 2021 .

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B. Problem

From description background behind problem above, that problem in writing this could formulate into 2 (two) formulations problems, namely:

1. What becomes obstacles in application *restorative justice in the* settlement process case then traffic that causes death?
2. How application of restorative justice in completion case criminal then traffic that causes Dead based on Studies Decision Number 96/ Pid.Sus /2018/ Pn.Pwr?

II. RESEARCH METHODOLOGY

Research, deep language English called with term *research*, in fact is a effort search.¹⁶ Past research (research) people looking for (search) findings new, in the form of true knowledge (truth, *true knowledge*), which can be worn for answer something question or for solve something problem.¹⁷

Research conducted writer use methodology study law normative. Study law normative name other is study law doctrinal which is also known as study literature or studies document because study this done or addressed only on written rules or ingredients another law. In essence research conducted with method researching ingredients References or secondary data consisting of from ingredients primary law, material law secondary and material law tertiary.¹⁸

Writer decide that writing this will using 3 (three) approaches research. Approach research used among others, Approach Law (*Statute Approach*), Approach Case (*Case Approach*) and Approach Conceptual (*Conceptual Approach*). With approach this, author will got information from proud aspect about current issue studied.

Type of data used writer in study this are primary, secondary, tertiary data as following:

a. Ingredients primary law , that is ingredients legally binding and consisting of from the rules existing legislation relationship with the problems studied , namely :

- 1) the Republic of Indonesia, the 1945 Constitution of the Republic of Indonesia;
- 2) Legislation, including:
 - a. Republic of Indonesia, Law no. 1 of 1946 *in conjunction with* the Republic of Indonesia, Law no. 73 of 1958 concerning the Enforcement of the Criminal Code;
 - b. Republic of Indonesia, Law no. 8 of 1981 concerning the Criminal Procedure Code;
 - c. Republic of Indonesia, Law no. 22 of 2009 About Road Traffic and Transportation ;
 - d. Republic of Indonesia, Law no. 2 of 2002 concerning the State Police;
 - e. Republic of Indonesia, Law no. 16 of 2004 As has changed with Law no. 11 of 2021 regarding attorney Republic of Indonesia; and
 - f. UU no. 48 of 2009 concerning the Principles of Judicial Power.
- 3) Director's Decision General of the Judiciary General Supreme Court of the Republic of Indonesia Number 1961/DJU/ SK /PS.00/12/2020 Regarding Enforcement right Guidelines Application Restorative Justice (*Restorative Justice*).
- 4) Regulation attorney Republic of Indonesia No. 15 year 2020 about Termination Prosecution Based on Justice Restorative.
- 5) Regulation State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative.
- 6) Circular Head Police Republic of Indonesia No. 8 of 2018 about Application *Restorative Justice* in Solution Case Criminal.
- 7) Decision Purworejo District Court Number 96/ Pid.Sus /2018/ Pn.Pwr with Defendant Yayat Suyatman Bin Suminta.¹⁹

b. materials , namely materials that provide an explanation of primary legal materials. Secondary legal materials in the form of literature or documents related to the justice system Restorative in the settlement of traffic crime cases , among others, is a settlement research report penalty criminal to Case Traffic via _ *Restorative Justice* . In addition, materials law secondary is also available from various thesis and journal scientific which is results study from circles law . As has been mentioned in section Study Previously , works scientific being _ ingredients law secondary in study this among others: Thesis with title Application Diversion At Investigation Level In Case Accident Traffic In The District Gunungkidul ; Enforcement Law Follow Criminal Violation Traffic ; and Accountability Follow Criminal Negligence Traffic By Children That Caused Others to Die . Third creation scientific the expected could give description to the author 's problem lift in study this . That Secondary legal materials in this study also come

¹⁶ Soetandyo Wignjosoebroto , 2002, " *Law : Paradigms , Methods and Problems* " , (Institute for Studies and Community Advocacy (ELSAM) and the Association for Update Law Community Based and Ecology (HUMA, Jakarta), p . 139.

¹⁷ *Ibid.*

¹⁸ Dudung Abdurrahman, " *Introduction " Method Research* ", (Yogyakarta: Kurnia kalam Semesta , 2003), p . 7.

¹⁹ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec1affbe23b47078eb3a_57.html . Retrieved December 1 , 2021 .

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from various textbooks that discuss various legal theories in order to solve the problems encountered in the settlement efforts penalty criminal to Case Traffic via *Restorative Justice*.

c. Tertiary legal materials, which provide a more in-depth explanation of primary and secondary legal materials, include: Big Indonesian Dictionary, Indonesian Encyclopedia, *Black's Law Dictionary*, and legal journals.

III. DISCUSSION

A. Obstacles In Application *Restorative Justice in the Settlement Process Case Traffic That Causes Dead*

Enforcement law will be influenced by several factors. Likewise with effort enforcement related law with solution case accident then cross light, medium nor weight carried with approach *restorative justice* as effort for more create a sense of justice good for perpetrator as well as victims because with approach draft *restorative justice* is Street for recover the litigants to state again.

As for influencing factors enforcement law according to Soerjono Soekanto, between other:

1. "Factor law
2. Factor enforcer law
3. Factor facilities and infrastructure
4. Factor community and
5. Factor culture or culture law."²⁰

Fifth influencing factors enforcement the law explained by Soerjono Soekanto above, also very effect on effectiveness solution case accident then cross light, medium, or heavy in skeleton realize solution case accident then more traffic fulfill a sense of justice, good seen from in terms of victims and perpetrator act criminal. Based on findings study that factors the of them are :

1. Factor Substance Law

Substance law is factor main and most important in effort enforcement law, because if rule law no clear or no exists, then apparatus enforcer law will experience obstacles (obstacles) for carry out enforcement law to incident the crime that happened in life society. Likewise in effort enforcement law to act criminal then cross on case accident light, medium, or heavy based on Decision Purworejo District Court Number 96/ Pid.Sus /2018/ Pn.Pwr with Defendant Yayat Suyatman Bin Suminta in the jurisdiction Purworejo District Attorney. Based on provision law could solved with consideration approach *restorative justice* through peace second split party as, that:

Restorative justice by special not yet set in Constitution Number 22 of 2009 concerning Traffic and Road Transport, will but related with change loss for accident victims then cross has set in Articles 235, 236, 240 of the Law Number 22 of 2009 concerning Road Traffic And Transport,²¹ that is about accident victims' rights then cross. One the rights of the victim is get change loss from responsible party on happening accident then cross as explanation chapter on following this.

Chapter 235:

- 1) "If the victim dies as a result of Accident Traffic as meant in Article 229 paragraph (1) letter c, Driver, owner, and/ or Transportation Company General must give help to expert victim's inheritance in the form of cost treatment and/ or cost burial with no abort demands case criminal.
- 2) If occur injury against the body or victim 's health Accident Traffic as meant in Article 229 paragraph (1) letter b and letter c, driver, owner, and/ or transportation company General must give help to victims in the form of cost treatment with no abort demands case criminal."²²

Chapter 236:

- 1) "The party who caused happening Accident Traffic as meant in Article 229 mandatory replace big loss determined based on decision court.
- 2) Obligation replace loss as referred to in paragraph (1) in Accident Traffic as meant in Article 229 paragraph (2) can done outside court if occur agreement peace between the parties involved. " ²³

Chapter 240:

Accident Victim Traffic is entitled get:

- a. "Help and care from responsible party answer on happening Accident Traffic and/ or Government ;
- b. Change loss from responsible party answer on happening Accident Traffic ; and
- c. Compensation Accident Traffic from company insurance."²⁴

²⁰ *Ibid*, p . 8.

²¹ Republic of Indonesia, Law Number 22 of 2009 concerning Traffic And Road Transport .

²² Republic of Indonesia, Law Number 22 of 2009 concerning Traffic and Road Transportation , Article 235.

²³ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 236.

²⁴ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 240.

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Every report accident then cross will processed in accordance procedures by investigators , as provision Article 227 of the Law Number 22 of 2009 concerning Traffic And Road Transport then in where is the investigator find that accidents that occur in the community , against case the could possible solution by *restorative justice* .²⁵ However , no means all case accident then cross could solved with use method approach *restorative justice* . Because, solution through approach *restorative justice is based* on existence desire from party doer and also accept from the victim or victim's family / deal second split party.

Enforcement law to act crime in the field of then cross , as shape provision special from provisions of the Criminal Code, then refers to to base Constitution Number 22 of 2009 concerning Traffic And Road Transport . inside Constitution this, problem application *Restorative justice* yet set by clear. However Thus, solution case with use approach, method or draft *restorative justice* has many applied in solution case accident then cross as studies case discussed in study this is Decision Purworejo District Court Number 96/ Pid.Sus /2018/ Pn.Pwr with Defendant Yayat Suyatman Bin Suminta in the jurisdiction attorney Horror Purworejo.

Where in Article 230 of the Law Number 22 of 2009 concerning Traffic and Road Transportation, confirms :
"Thing" accident then cross as meant in Article 229 paragraphs (2), (3) and (4) are processed with court proceedings criminal in accordance with provision regulation legislation."²⁶

This thing means that every case accident then cross, ok that accident then cross light, medium nor heavy should solved in accordance with regulated judicial proceedings in law. Practice, solution case accident then cross the weight that causes deaths that occur within the jurisdiction Purworejo State Prosecutor with Decision Purworejo District Court Number 96/ Pid.Sus /2018/ Pn.Pwr with Defendant Yayat Suyatman Bin Suminta could solved by peace or with use method or approach *restorative justice*.²⁷

Such a situation can said that substance Constitution Number 22 of 2009 concerning Traffic and Road Transport, has negative influence to effectiveness solution case accident then cross by peace (*restorative justice*). Because, substance Constitution this no accommodate desire community, or in other words the law this no notice values or rules current law or moment this develop in society (*living law*).

Even though certainty, justice and expediency law is mark base from law, however Among all three often there is tension one each other. Connection Among justice, benefit and certainty tough law for put together Among one each other due to Among all three containing different demands, so one each other is pregnant potency contradiction.

As example, setting about solution case accident then cross light, medium, or adjustable weight in Constitution Number 22 of 2009 concerning LLAJ, according to Constitution to perpetrator should processed by law and based on judicial procedural law applicable criminal as well as threatened with criminal. Solution case accident then cross light, medium, or heavy based on Constitution Number 22 of 2009 concerning LLAJ has realize principle certainty law, that is existence regulation Legislation that regulates about how solution case accident then cross light, medium, or heavy. About is regulation that fair and have utility to society, is outside context priority certainty law.

Related with solution case accident then cross by peace with approach (*restorative justice*), is known that not yet set in Constitution Number 22 of 2009 concerning LLAJ, so that in Thing this no come true certainty law. However so, in practice public want solution by peace done outside court, because solution by peace contains legal ideas that can create a sense of justice. Although realized that Among justice, benefit and certainty law is something difficult situation for side by side, but at least must created one that is justice. Priority to principle justice own consequence to abandonment principle certainty law, which is principle in Justice Criminal.

Ideal three base objective law that should work on, third mark base objective law that expected could come true by together, but when no maybe, then should prioritized the justice first, then the benefits, and lastly new certainty the law.²⁸

2. Factor Apparatus enforcer Law

As good whatever something rule law , then in implementation very depending on ability apparatus enforcer the law , because if apparatus enforcer law no have ability adequate in carry out enforcement law , then law no will could give benefit for society . Enforcement law actually more many focused on discretion. Discretion concerning taking no decision bound by law, where judgment personal also holds role. Inside enforcement law discretion very important, because:

- a) "No" there is regulation such legislation complete, so could arrange all behavior human.
- b) Existence lags for adapt legislation with development inside society, so cause uncertainty.
- c) Lack of cost for apply regulation legislation as desired by the builder law.
- d) Existence individual cases that require handling by special."²⁹

²⁵ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 227.

²⁶ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 230.

²⁷ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec_1affbe23b47078eb3a_57.html. Retrieved December 1 , 2021 .

²⁸Edi Setiadi & Rena Yulia , 2010, " *Legal Criminal Economics* ", (Graha Science , Yogyakarta), p . 9.

²⁹ Soerjono Soekanto . *Op. Cit .*, p . 8.

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Solution case accident then cross light , medium , or heavy by peace in effort realize justice on the side influenced by factors Constitution about Road Traffic and Transportation , namely not yet arranged by firm about application *restorative justice* , is also influenced by factors enforcer law .

Application draft justice *restorative justice* in solution case accident then cross light, medium nor heavy role police nor institution Justice as enforcer law very influential to success from solution case accident then cross done by peace. Influence enforcer law in Thing this police and agencies Justice seen from powers of the police as investigator.

Is known that Article 230 of the Law Number 22 of 2009 concerning LLAJ confirms that:

“ Every case accident then traffic that meets elements criminal should solved through the judicial process criminal .”³⁰

It means police should carry out / do action law, as for action the law in question is To do investigation to every accident victim report then cross light, medium, or heavy and at the same time bestow things that have done done inspection to party Prosecutor, who then bestowed file prosecution by prosecutor to Court with decision Court appoint a judge for lead the judge in the process of proving case criminal The traffic that happened good light, medium, or heavy.

In practice, investigator Police in accept accident victim report then cross no as well as immediately to do action such a law. It means the ideal role done investigator police no implemented. Investigator Lacquer So often use authority the discretion he has in address and resolve case accident then cross light.

For example : Authority discretion made by investigators Police in apply draft solution things outside court , obviously contrary with provision Article 230 of the Law Number 22 of 2009 concerning LLAJ. Next, discretion investigator lacquer then also see in application Article 36, Article 61, Article 62, as well as Article 63 paragraph (3) Perkap Number 15 of 2013 concerning Handling Procedures Accident Traffic, where in provision Article 63 paragraph (3) hood Number 15 of 2013, determined that :

Chapter 36:

- 1) “Handling accident Light traffic available enough Proof or fulfillment element act criminal, committed with the inspection process short.
- 2) Inspection process short on Accident Light traffic, if occur agreement peace between parties involved could solved outside court .”³¹

Chapter 61:

- 1) “Determination and payment change Loss The resulting material Accident Traffic can solved through outside process court.
- 2) Solution determination and payment change Loss Material as referred to in paragraph (1) is carried out by discussion directly between _ the parties involved Accident Traffic.
- 3) Completion process change loss material prohibited involve investigator / investigator helper.”³²

Chapter 62:

- 1) “Parties could request help party third as a mediator if solution by discussion as meant in Article 57 paragraph (2) no achieved deal.
- 2) In Thing has occur agreement between the parties involved, poured in letter statement and submitted to investigator / investigator maid.
- 3) Investigator after accept letter statement attached in file case as judge’s consideration in take decision.”³³

Article 63 Paragraph (3):

“Solution things outside _ hearing court as referred to in paragraph (2) may implemented during not yet made report police.”³⁴

However in provision Regulation State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative, Articles 3, 7, and 10 are explained about completion case Traffic with _ approach *restorative justice* could done as explanation following :

Chapter 3:

- 1) “Handling Follow Criminal based on Justice Restorative as meant in Article 2 must fulfil requirements :
 - a. general ; and/ or

³⁰ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 230.

³¹ Republic of Indonesia, Regulations Head State Police of the Republic of Indonesia Number 15 of 2013 concerning Procedures for Handling Accident Traffic , Article 36.

³² Republic of Indonesia, Regulations Head State Police of the Republic of Indonesia Number 15 of 2013 concerning Procedures for Handling Accident Traffic , Article 61.

³³ Republic of Indonesia, Regulations Head State Police of the Republic of Indonesia Number 15 of 2013 concerning Procedures for Handling Accident Traffic , Article 62.

³⁴ Republic of Indonesia, Regulations Head State Police of the Republic of Indonesia Number 15 of 2013 concerning Procedures for Handling Accident Traffic , Article 63 Paragraph (2).

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- b. special.
- 2) Condition general as referred to in paragraph (1) letter a, applies for handling Follow Criminal based on Justice Restorative on activities maintenance Function Research Criminal , Investigation or Investigation .
- 3) Condition special as referred to in paragraph (1) letter b, only apply for handling Follow Criminal based on Justice Restorative on activities Investigation or Investigation ."³⁵

Chapter 7:

“Requirements special as meant in Article 3 paragraph (1) letter b, is a condition addition for Follow Criminal :

- a. Information and transactions electronics ;
- b. Drugs ; and
- c. then cross ."³⁶

Chapter 10:

“Requirements special for Follow Criminal then cross as meant in Article 7 letter c, includes :

- a. Accident then traffic caused driving vehicle motorized with ways and circumstances harm that results in loss material and/ or injured victims light ; or
- b. Accident then cross on the road because negligence resulting in human casualties and/ or loss treasure thing ."³⁷

And based on Regulation attorney Republic of Indonesia Number 15 of 2020 About Termination Prosecution Based on Justice Restorative, where termination prosecution on base restorative justice can we find in Article 3 and Article 4 provisions that regulates things as following.

Chapter 3:

- 1) “Prosecutor General authorized close matters of interest law.
- 2) Closing matters of interest law done in thing :
 - a) defendant died ;
 - b) expired prosecution criminal ;
 - c) has there is decision the court that obtained strength law permanent to somebody on the same thing (*nebis in idem*);
 - d) complaint for act criminal complaint revoked or drawn back ; or
 - e) Has there is solution things outside court (*afdoening building process*).
- 3) Settlement of cases outside court as referred to in paragraph (2) letter e may done with conditions :
 - a) for act criminal certain , maximum criminal fine paid with volunteer in accordance with provision regulation legislation ; or
 - b) Has there is recovery return state beginning with use approach Justice Restorative.
- 4) Solution things outside court with use approach justice restorative as referred to in paragraph (3) letter b stop the prosecution.
- 5) Termination prosecution based on justice restorative as referred to in paragraph (4) is carried out by the Prosecutor General by responsible answer and submit by tiered to Head High Court ."³⁸

Chapter 4:

- 1) “Termination prosecution based on Justice Restorative done with pay attention to :
 - a) Victim's interests and interests other protected laws ;
 - b) avoidance of negative stigma ;
 - c) avoidance retaliation ;
 - d) response and harmony community ; and
 - e) Propriety, decency, and order general.
- 2) Termination prosecution based on Justice Restorative as referred to in paragraph (1) is carried out with consider :
 - a) subject , object , category and threat act criminal ;
 - b) background behind happenj did act criminal ;
 - c) level disgrace ;
 - d) loss or the consequences from act criminal ;
 - e) *cost and benefit* handling case ;

³⁵ Republic of Indonesia, Regulations State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative , Article 3.

³⁶ Republic of Indonesia, Regulations State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative , Article 7.

³⁷ Republic of Indonesia, Regulations State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative , Article 10.

³⁸ Republic of Indonesia, Regulations attorney Republic of Indonesia Number 15 of 2020 About Termination Prosecution Based on Justice Restorative , Article 3.

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- f) recovery back to state back ; and
- g) existence peace between the Victim and the Suspect.”³⁹

Based on hood Number 15 of 2013 concerning Handling Procedures Accident Traffic and Regulation State Police of the Republic of Indonesia Number 8 of 2021 Regarding Handling Follow Criminal Based on Justice Restorative , also Regulation attorney Republic of Indonesia Number 15 of 2020 About Termination Prosecution Based on Justice Restorative . Where in application justice *restorative justice* in Thing authority Police To do Investigation and authority attorney To do Prosecution as apparatus enforcer linked with application justice *restorative justice* in solution case then deep cross provision the law that is Constitution Number 22 of 2009 concerning LLAJ yet arrange provision know application justice *restorative* then on Thing the Becomes officers ' problems enforcer law specifically police and prosecutors for apply approach justice *restorative justice* in solution case then cross with approach *restorative justice* because termination investigation or prosecution only possible for done outside court or with method discretion .

3. Factor Facilities and Infrastructure

Besides second factors that have described above, enforcement the law is also affected by support available facilities and infrastructure. Until moment this available facilities and infrastructure no is obstacle significant in solution case criminal accident then cross with approach justice *restorative*. Therefore, for carry out solution case criminal accident then cross with approach *restorative*, no needed facilities and infrastructure special, apart from room for To do investigation, prosecution and process Justice as the place respond results peace made between the parties involved lacquer then. And the most important is certainty rule governing law about application justice *restorative justice* in case then unfinished traffic set in the provisions of the LLAJ Law so that it immediately set with revise provision law it in order to create justice, certainty, and benefit law.

4. Community Factor

On explanation beginning has explained that solution case accident then cross light, medium, meupun heavy by peaceful (outside court) with approach *restorative justice* as shape recovery state of state beginning with peace second split party with a win-win solution is the wishes of the parties for complete case the with method or Street kinship. Desire is based on a agreement between the parties about agreed things related with solution things, especially about problem change loss which is more victim rights emphasis on the completion process case by peace. With approach *restorative justice* help the perpetrators crime for avoid crime more in the future come.⁴⁰

As in The 4th Precept of Pancasila as state ideology and views life in nation and state people Indonesia has set principle application draft *restorative justice* that is discussion for consensus, listed that " a people led by wisdom " wisdom in deliberation representative “Meaning Indonesian nation itself has glorify principle discussion as something ingrained habit meat for complete all the problems that exist in the nation this. Here Proof that actually *restorative justice* has also been thrive in it. Discussion will reach something a win-win solution without harmful or cause imbalance to one party so that the solution could ter accomplish.⁴¹

However frequent reality happening in society is that agreement in the peace process case criminal with method deliberation of course should witnessed by third as a mediator, often the process interfered by third, like intimidation, existence interest party materials third so that discussion or mediation outside court meet Street dead end because existence interest party the third entered in interest of one party usually is victim with habit where total change loss. Change loss meant submitted by the victim without see rationality case that happened and ability from perpetrator, should solution with method *restorative justice* through agreement between the victims and perpetrators must based on principle balance, so that objective from solution case by peace the could materialized , that is reach justice and more fulfill the sense of justice all party.

5. Factor Culture Law

Factor important for support take effect something regulation law by effective, is factor culture law society. Law will walk effective or will obeyed by society, on the contrary law is also needed for change culture law society . Because _ that, substance law with culture law, is one unity that does not could separated , especially in relation with effort enforcement law .

go from statement that, then regulations in the field then traffic , especially those related to with solution case criminal accident then cross , should aligned with values the law that has Becomes culture law society , namely existence prevalence in public for complete the problems faced with method deliberation for reach consensus as mandate The 4th principle of Pancasila which is facilitated by directly by the rules law for underlying enforcement law . This thing could formed if in rule governing law field then cross also set about method completion case then cross with method discussion for reach deep consensus draft law called with draft justice *restorative*.

³⁹ Republic of Indonesia, Regulations attorney Republic of Indonesia Number 15 of 2020 About Termination Prosecution Based on Justice Restorative , Article 4.

⁴⁰ Zulmaidah , M. Iman Santoso , and Firman Wijaya, " Application of Restorative Justice Against " Follow Criminal Accident Traffic (Study Case Decision Number 151/ Pid.Sus /2013/ PN.Jkt.Tim) ”, Journal Krisna Law Volume 2, Number 1, 2020, p . 4.

⁴¹ *Ibid* , p . 4.

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Based on the above description, then could understood that culture society is also very effect on success solution case accident then cross by peace in relation for realize justice for interests of the parties as shape recovery to state again. With so, can said that influence culture law public own influence to implementation solution case accident then cross light, medium, or weight carried by peace with approach (*restorative justice*). Factor culture law should formed to form habit public for each other forgive and hold firm bond kinship, so factors habit public the could influential positive to solution case accident then light by peaceful (outside court) as well as (in court) which aims for give and make justice for all parties (victim and perpetrator).

B. Application Restorative Justice In Solution Case Criminal Traffic That Causes Dead Based on Studies Decision Number 96/ Pid . Sus /2018/ Pn. Pwr .

Solution case criminal with approach justice *restorative* (*restorative justice*) based on Bambang Waluyo's opinion are :

"A a trying approach complete case criminal by peace with empower the parties who have interest in solution case that. Solution by peace the could reached, if perpetrator realize his fault and volunteer willing give change make a loss to the victim in skeleton get' forgiveness ' from the victim. Approach *restorative justice* help the perpetrators crime for avoid crime more in the future come." ⁴²

Braithwhite, expert Australian criminology differentiates *restorative justice*, be two draft namely :

1. "First, focus on processes and concepts (concepts), namely bring together all interests affected by a error ; and
2. Second, focus on values, namely justice restorative as related value with healing (recovery) and injustice, as well as put victims like before happening crimes, including refit connection between the victim and the perpetrator. This thing means justice restorative good as a process or as value, close relation with reconciliation between the victim and the perpetrator."⁴³

Refer to the definition and conception *restorative justice* as has stated above, can is known that solution case criminal with approach justice *restorative* in essence will involve parties who have interest in solution case that.

In Thing this, the parties in question is perpetrators, victims and communities each. parties the expected could deliberation for reach agreement together in skeleton complete act crime that has been happen. Because of the *restorative justice process* that involve interested parties, then according to the "*Handbook on Restorative Justice Program*" published by the United Nations in November 2006, activities *restorative justice* should implemented with assumption as following :⁴⁴

1. "That the response to crime should repair as much a possible the harm suffered by the victor im (Response on crime that must repaired as good as possible as well as change make a loss on suffering experienced by the victim). Assumption this emphasize that the victim must given access for could be one deciding party solution end from act criminal because the victim is the party who is most harmed and who suffers the most, so that the victim can request effort repair or replacement the loss he suffered to perpetrator.
2. That offenders should be brought to understand that their behavior is not acceptable and that it had some real consequences for the victim and community (Perpetrator should brought for understand that his behavior no can accepted and things it has several consequence real for victims and communities). Assumption this emphasize that perpetrator should brought to understanding and awareness that act the crime he committed no could accepted public because harm other people, good it's a victim direct nor his community. With existence awareness the expected perpetrator willing for To do introspection and ready responsible answer on losses caused by actions that have been did.
3. That offenders can and should accept responsibility for their action (Perpetrators should could accept not quite enough answer that arises from Act behavior). With existence awareness on fault, perpetrator expected own willingness for responsible answer. Without existence awareness on what he did wrong, impossible perpetrator willing by volunteer for responsible answer on the deed he did.
4. That victim should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation. (The victim must get opportunity for state his wish and follow as well as determine step best that can be done perpetrator for repair the damage it causes). With existence access for victims to participate in solution case, then the victim is not only could participate deliver tun tutan compensation, but also have a chance for participate grow awareness perpetrator and determine step best for repair the damage caused. With so, will appear mutual connection influence between victim and perpetrator in choose solution best as effort recovery connection social between both of them.
5. That community has a responsibility to contribute to this process could follow as well as in progress). Completion process case criminal with approach justice restorative no only owned by perpetrator and victim. Society is also considered own not quite enough

⁴²Bambang Waluyo , 2016, " *Design Function Prosecutor's Office on Restorative Justice* ", (Rajawali Pers, Jakarta), p . 40-41.

⁴³ Quoted from , Romli Atmasasmita , " *Cita Justice Restorative In Update Law Indonesian Criminal* ", Paper Studying Matriculation Student of Master of Science program Law at the Faculty Law University Padjadjaran September 1, 2012. Papers this with a number of revision editorial once read at the National Seminar, " *The Role of Judges in remind Judge Professionalism Towards Supreme Court* ", held by IKAHI in skeleton Repeat 59th IKAHI Year April 25 2012, p . 12-13.

⁴⁴Eva Achyani Zulva and Indriyanto Seno Adji , 2011, " *Shift Paradigm Sentencing* ", (Lubuk Agung, Bandung), p . 75-76.

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answer good in implementation of the process as well as implementation the result is good as organizer, observer nor facilitator as well as part from victims who also have to got on the result of an ongoing process.”⁴⁵

Based on description on about definition, concept, and purpose *restorative justice* in solution something thing, in Thing discussion this more carry on will linked with how application approach justice *restorative justice* e in completion case then deep cross the rules explained that based on Constitution Number 22 of 2009 concerning Accountability of Road Traffic and Transportation criminal set in Article 310 mentioned that :

- 1) “Everyone who drives Vehicle Motorized because his negligence result in Accident Traffic with damage vehicle and/ or goods as meant in Article 229 paragraph (2), shall be punished with criminal imprisonment for a maximum of 6 (six) months and/ or a maximum fine of IDR 1,000,000.00 (one million rupiah);
- 2) Everyone who drives Vehicle Motorized because his negligence result in Accident Traffic with injured victims light and damage vehicle and/ or goods as intended in Article 229 paragraph 3 (three), shall be punished with criminal imprisonment for a maximum of 1 (one) year and/ or a maximum fine of IDR 2,000,000.00 (two million rupiah);
- 3) Everyone who drives Vehicle Motorized because his negligence result in Accident Traffic with injured victims heavy as meant in Article 229 paragraph 4 (four) shall be punished with criminal imprisonment for a maximum of 5 (five) years and/ or a maximum fine of Rp. 10,000,000.00 (ten million rupiah); and
- 4) In Thing accident as referred to in paragraph 3 (three) which results in the death of another person , shall be punished with criminal imprisonment for a maximum of 6 (six) years and/ or a maximum fine of Rp. 12,000,000.00 (two mercy million rupiah).”⁴⁶

1. Position Case

Based on studies the case made ingredients in study this is Decision Case Number 96/ Pid.Sus /2018/ Pn.Pwr, Verdict Purworejo District Court with Defendant Yayat Suyatman Bin Suminta. That in court Prosecutor General has confront Defendant with indictment in the form of subsidies that is Primary violate Article 310 paragraph (4) of the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation namely accident then cross weight that resulted in the victim 's death . That because indictment Prosecutor General arranged by Subsidiary so to indictment the more formerly The panel of judges will consider indictment Primary where if indictment primary no proven so defendant should released from indictment primary and beyond will considered indictment subsidiary or otherwise if indictment primary has proven so indictment subsidiary no need considered right again . On indictment the based on deed defendant Yayat Suyatman Bin Suminta as following :⁴⁷

That he Defendant Yayat Suyatman Bin Suminta on Wednesday , May 2 , 2018 approx at 05.30 WIB or at least some other time in May 2018 at Jalan Raya Purworejo Yogyakarta Km. 4 Villages Borowetan Subdistrict Banyuurip Regency Purworejo or at least in other places that still including within the Law Area Purworejo District Court , driving Vehicle Motorized because his negligence result in Accident Traffic that results in the death of another person.⁴⁸

As for deed Defendant do with ways as following :

- “That Defendant the beginning of the day Tuesday May 1, 2018 approx at 21.00 pm driving vehicle Motorized Tourist Bus Fragrant number Police D 7674 AC transport group Al Taufik Al Islam Islamic Boarding School Tasikmalaya from Tasikmalaya want going to to Yogyakarta , when The trip Defendant Arriving at Wangon Cilacap approximately 22.00 WIB rest about 10 minutes for pee , then continue journey then until Karanganyar Kebumen approximately at 02.39 WIB Defendant rest at home Eat Candisari , then Defendant continue journey again arrived in Purworejo approximately 04.00 Wib rest at the Great Mosque approximately 1 hour later continue journey to Yogyakarta.”⁴⁹
- “That The defendant on Wednesday , May 2 , 2018 approx at 05.30 WIB at the time driving vehicle Motorized Tourist Bus Fragrant number Police D 7674 AC passing on Jalan Raya Purworejo Yogyakarta Km. 4 Villages Borowetan Subdistrict Banyuurip Regency Purworejo with speed about 50 km/hour in 4th gear , state Street paved straight , then cross quiet , weather bright , from North to South direction of distance already see 2 riders bicycle ontel side by side front behind unidirectional with Defendant from North to South however driver bicycle ontel in front already start walk / turn right , then Defendant attempted for overtake 2 riders bicycle ontel the then at Defendant precede no ring horn and before The defendant also saw driver bicycle ontel in front already start move

⁴⁵Eva Achyani Zulva and Indriyanto Seno Adji , *Op.Cit* , p . 75-76.

⁴⁶ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , (LN No. 96 of 2009, TLN No. 5025), Article 310.

⁴⁷ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec_1affbe23b47078eb3a_57.html. Retrieved December 1 , 2021 , p . 1-2.

⁴⁸ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec_1affbe23b47078eb3a_57.html. Retrieved December 1 , 2021 , p . 2.

⁴⁹ *Ibid.*

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to right right Defendant should could guess if driver bicycle ontel that goes hand in hand in front will turn right and Defendant no attempted braked , then at Defendant precede crash from direction behind bicycle the ontel driven by Turah who has been start walk to right with position point crash in the middle Street with regarding bumper middle vehicle Motorized Bus Paris Tourism Fragrant hit wheel behind bicycle ontel , so resulted in the victim of Turah died after 2 days of being treated at Bethesda Hospital, Yogyakarta , according to *Visa et repertum* number 00685/VR.016/RM/V/2018 dated 22 May 2018 marked handled by dr. Jaka Marjono , Sp. B from RSU Bethesda Yogyakarta , which in conclusion :⁵⁰

- Medical Team already To do inspection in accordance standard Service Medical at Bethesda Hospital, Yogyakarta to a patient female , 60 years old , from 2 May 2018 to May 4, 2018 at 05.50 WIB patient died . Examination Results found :
 - 1) Torn wound" already stitched and wound blisters on the head part behind adjacent right and back hand right.
 - 2) Bleeding inside brain and below membrane brain part on arrived at the side adjacent left with pressure to direction right.
 - 3) Abnormalities the on consequence violence object blunt."⁵¹
- "Deed" Defendant as regulated and threatened criminal in Article 310 Paragraph (4) of the Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic And Road Transport."⁵²

2. Judge's Consideration in Decision Number 96/ Pid.Sus /2018/ Pn.Pwr

judge 's basis for consideration is something reason for judges in consider sanctions that will given to the accused who was drafted by concise about facts and circumstances along with tool the evidence obtained of the inspection process so that could made base determination error defendant. The basis for the judge 's consideration consists of: from consideration juridical and non- juridical considerations . However usually in dropping verdict , the judge tends to more use consideration juridical than non juridical comparisons. A judge must have reason and basis considerations in drop the verdict .

In drop decision caught must pay attention to 3 (three) elements, namely :

- 1) "Certainty law, emphasizes that the law or applicable rules enforced and adhered to.
- 2) Benefits , emphasizes that implementation law should give benefits , don't until precisely cause anxiety for society and state.
- 3) Justice, emphasizes that with set up law so will give a sense of justice for society."⁵³

Moment drop verdict, on examination in court a judge refers to the facts obtained, as well as from tool valid evidence available as arranged in Article 184 paragraph (1) of the Law Criminal Procedure Code (KUHP), namely, Tools valid evidence are :

- 1) "Description witness
- 2) Information expert
- 3) Letter
- 4) Instruction
- 5) Information defendant."⁵⁴

As with those who have indicted by the Prosecutor Prosecutor General to defendant Yayat Suyatman Bin Suminta that in indictment Primary defendant has alleged by the Prosecutor General violate Article 310 Paragraph (4) of the Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic And Road Transport.⁵⁵

Provision Article 310 paragraph (4) of the Republic of Indonesia Law no. 22 of 2009 About Road Traffic and Transport mentioned that :

"Everyone who drives vehicle motor because his negligence result in accident then cross with cause other people death is punished with imprisonment for a maximum of 6 (six) years and/ or the most fines Rp . 12,000,000-, (two mercy million rupiah)."⁵⁶

Then the Judge in weigh deed The defendant who had violates 310 Paragraph (4) of Law of the Republic of Indonesia Number 22 Years 2009 about Traffic And Road Transport , view payload the elements contained in chapter that . Elements that's what's loaded as following :

⁵⁰ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec1affbe23b47078eb3a_57.html. Retrieved December 1 , 2021 , p . 3.

⁵¹ *Ibid.*

⁵² Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec1affbe23b47078eb3a_57.html. Retrieved December 1 , 2021 , p . 4.

⁵³ Sulardi , " *Certainty " Law , Benefit , and Justice To Criminal Child "* , (Journal Judicial , Vol. 8 No.3 Edition December 2015), p . 258.

⁵⁴ Republic of Indonesia, the Book of Law Criminal Procedure Code , Article 184 Paragraph (1).

⁵⁵ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec1affbe23b47078eb3a_57.html. Retrieved December 1 , 2021 .

⁵⁶ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 310 Paragraph (4).

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1) "Everyone ;

Element from " Everyone " has definition same with " Stuff Who " in the Criminal Code is pointing to Subject Law as supporter rights and obligations . In Thing this subject law pointing to the perpetrator act criminal that is Defendant Yayat Suyatman Bin Suminta. So that" Everyone " element is fulfilled according to law.

2) driving Vehicle Motorized ;

Element second this in accordance Article 1 point 8 of the Law of the Republic of Indonesia Number 22 of 2009 concerning then traffic and transportation road : every equipment driven vehicles mechanic in the form of machine besides vehicles running on rails. In the case of this Defendant use vehicle Motorized Tourist Bus Fragrant as intermediary happening accident and fulfilled according to law.

3) Due to negligence ;

Negligence / negligence or *Culpa* interpreted lack of caution or negligence, lack of vigilance or carelessness. words Deep *Culpa* meaning large means error in general, moderate in meaning narrow is shape error in the form of omission.⁵⁷ The omission that occurred in incident this is perpetrator in drive vehicle based on fact law based on with negligence. So that element this fulfilled according to law.

4) Cause Accident Traffic ;

Consequence from method Defendant Driving Tourist Bus Fragrant with no be careful occur crash and crash from direction behind bicycle ontel driven by Turah. Element this has fulfilled according to law.

5) Resulting in the Death of Others ;

From the consequences accident that, action from perpetrator result in loss life someone. The element of "caused another person to die" has been fulfilled according to law ."⁵⁸

Action The defendant, according to Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic and Road Transportation, Article 235 paragraph 1 states that:

"If the victim dies as a result of accident then cross as meant in Article 229 paragraph (1) letter c, the driver, owner, and/ or company transport general must give help to expert inheritance victim in the form of cost treatment and/ or cost burial with no abort demands case criminal."⁵⁹

So related with actions taken by the parties family Defendant and from PT. Fragrant Mighty Son with give compensation IDR 10,000,000.00 (ten million rupiah) to the victim's family, have in accordance with Chapter the that is existence be responsible answer from perpetrator.

Next on tools Proof testimony, Sarijan Bin Wongso Truno as witness 1 as husband from the victims of Turah, that witness 1 as husband of the victim gave description that witness has accept compensation from party family Defendant and from PT . Harum Perkasa Putra Rp10, 000,000.00 (ten million rupiah). And witnesses has forgive Defendant, and both parties party already there is agreement make peace.⁶⁰

Considering that for drop criminal to Defendant, then need considered more formerly aggravating and mitigating circumstances Defendant;

Aggravating circumstances: ⁶¹

- deed Defendant has resulting in the death of the TURAH Victim ;

Mitigating circumstances: ⁶²

- Has occur peace Among Defendant and family Witness Sarijan Bin Wongso Taruno (Husband of Turah Victim);
- Defendant has give money compensation to family Witness Sarijan Bin Wongso Taruno as provision regulation legislation ;
- Defendant has confess his mistake and regret his actions ;

In Thing this gift excuse me on the agreement that has been done by both party is one draft in approach solver case with draft approach *restorative justice* because party the victim's family has forgive , no there is hatred and revenge revenge , fit objective justice *restorative* in general recover the parties until achievement peace between both sides party .

⁵⁷ Sudarto , 1990, " Law " *Criminal 1* ", (Sudarto Foundation , Semarang), p . 123.

⁵⁸ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 235 Paragraph (1).

⁵⁹ Republic of Indonesia, Law Number 22 of 2009 concerning Road Traffic and Transportation , Article 235 Paragraph (1).

⁶⁰ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec1_afffbe23b47078eb3a_57.html. Retrieved December 1 , 2021 .

⁶¹ *Ibid.*

⁶² *Ibid.*

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In the law positive is set about how reason delete it authority undergo crimes, including:

- a) "No" existence complaints on offenses complaint ;
- b) *Ne bis in idem* ;
- c) death the defendant ;
- d) Expired ;
- e) Has there is payment fine maximum to office certain for the only offense threatened with fine course ;
- f) There is an abolition or amnesty."⁶³

See authority deletion crime, giving sorry, deal peace of the parties , payment change loss in shape compensation as help application *restorative justice* in effort recovery return connection second split party , not be one reason for abolished / dropped something punishment criminal will but Becomes judge 's consideration in consider right sweat punishment. as studies case in study this Decision Case Number 96/ Pid.Sus /2018/ Pn.Pwr , Verdict Purworejo District Court with Defendant Yayat Suyatman Bin Suminta. That in court Prosecutor General has confront Defendant with indictment , stating Defendant Yayat Suyatman Bin Suminta guilty To do act criminal because his negligence result in Accident Traffic that results in the death of another person as violate Article 310 Paragraph (4) of the Republic of Indonesia Law Number 22 Year 2009 concerning Traffic and Road Transportation in the indictment. And Dropping criminal to Defendant with criminal prison for 7 (seven) months reduced During Defendant detained , with order Defendant still on hold .⁶⁴

Then in the trial process the judge 's judgment , where based on letter agreement peace as attached inside file case , information Witnesses and the Defendant , that party family Defendant has agreed for make peace , realize that accident then cross the is calamity and give compensation to the family of the Turah Victim (Alm) , namely has give cost compensation in the amount of IDR 10,000,000.00 (ten million rupiah), as well as party family Defendant with The family of the Turah Victim (Alm) agrees make peace , then objective from justice restorative has achieved as well as : Declare Defendant Yayat Suyatman Bin Suminta the above , proven by legitimate and convincing guilty To do act " driving " crime Vehicle Motorized because his negligence result in Accident Traffic that results in the death of another person ” as in indictment single Prosecutor General , and Dropping criminal to Defendant because that with criminal prison for 4 (four) months .⁶⁵

On the judge 's decision could concluded with did effort approach *restorative justice* initiated by the judge and armed action cooperative parties until achievement peace because perpetrator confess his mistake and promise for no repeat it again as well as has give compensation to party victim 's family lighten up burden party family. and family victim too has forgive perpetrator , top achievement approach *restorative justice* the Becomes judge 's consideration in lighten up decision in case this until indictment criminal 7 (seven) months imprisonment by the prosecution general to the defendant and the judge decided to Defendant Yayat Suyatman Bin Suminta in Decision Case Number 96/ Pid.Sus /2018/ Pn.Pwr 4 (four) months imprisonment criminal prison , where in this case indictment prosecutor general and different judge decisions the because consideration already achievement approach *restorative justice* by both split party with peace made by both sides party with things already achieved other between both sides party Thing this is what becomes base judge 's consideration in decide case that .⁶⁶

As described on with achievement peace both sides parties and gifts compensation by the defendant to party victim's family as shape lighten up the condition of the victim who has also described as one of the shape consideration solution case criminal with approach *restorative justice* because Defendant has truly prioritize the victim the fault and not solely Defendant only punished in accordance state decree , but existence importance the victim and the achievement peace both sides party. So that in Thing this according to writer that there is application *restorative justice* inside Decision Number 96/ Pid.Sus /2018/ Pn.Pwr Purworejo District Court in complete problem accident then cross by Yayat Suyatman Bin Suminta which causes death .

IV. CLOSING

A. Conclusion

From result writing that has outlined above , then could arranged a number of conclusion as following :

1. Obstacles in application *restorative justice in the* settlement process case then cross because factors following is . Factor substance law where in rule Constitution Number 22 of 2009 concerning Traffic and Road Transport yet arrange provision about solution case then cross use draft or approach *restorative justice* because in the law 's rules only set about change make a loss on loss caused by a deed offender then cross .

⁶³ Barda Nawawi, 1993, " *Law Criminal II* ", (Provision Agency Ingredients Studying UNDIP Faculty , Semarang), p . 57.

⁶⁴ Directory Decision Supreme Court, Related Criminal Traffic With _ Defendant Yayat Suyatman Bin Suminta , https://cepatan3.mahkamahagung.go.id/direktori/cepatan/b2787_b45aec1_afffbe23b47078eb3a_57.html. Retrieved December 1 , 2021 .

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

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2. Application *restorative justice* in case Decision Number 96/ Pid.Sus/ 2018/ Pn.Pwr Purworejo District Court in law positive has fulfilled , that is solution with shape approach *restorative justice board/youth panels* , where shape this involving judges, prosecutors, and lawyers for complete case accident then traffic that causes Dead with effort or shape restore state second split party to the situation again. On it 's stamped peace on agreement of the parties until the victim forgives deed perpetrator , until carry out change loss / restitution and admit mistakes that have been made, thing the Becomes base the judge 's consideration element lightening punishment with concepts approach *restorative justice* . Giving sorry by the victim to perpetrator criminal then cross no could abort punishment criminal , because in law positive no there is reason forgiving who can deletion criminal , but only as relief punishment course . So that in the verdict Defendant got relief punishment prison from Prosecutor 's demands 7 (seven) months prison , will but decision the panel of judges handed down punishment imprisonment of 4 (four) months which is the period of detention previously who had lived deducted with punishment the sentence imposed.

B. Suggestion

From what has been describe author on chapters before, there some suggestions to put forward as input, among others as following:

1. Need for accommodate living law in society (*living law*) culture law in rule Constitution Traffic, in particular about solution case accident then cross light, medium, or proper weight set about solution things outside court or with approach justice *restorative* as effort solution case then cross with method restore state second split litigants to state beginning with a win - *win solution* with revise substance rule UULAJ law to accommodate draft completion case then cross light , medium , or heavy with approach *restorative justice*.
2. Law National in Indonesia is still adhere to system *retributive* should for could apply system *restorative justice* with pay attention to the victim so could by immediately the victim is pro - active in follow give penalty to perpetrator. Because in m rules application *restorative justice* only limited to case criminal light with threat a maximum of 3 (three) months and a fine of 10,000 (ten thousand rupiah) where application *restorative justice* should be in the settings no only limited to reject measuring criminal light where limitation maximum threat 3 months imprisonment should raised the limit Becomes more tall as well as prioritize deliberation for consensus in solution case between pata party as shape application *restorative justice* as shape breakthrough law To use prevent Keep going happening *over capacity* institution the current correctional this the more severe.

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