

**TRAFFIC ACCIDENTS THAT CAUSE DEATH AT
LHOKSEUMAWE POLICE STATION ISLAMIC CRIMINAL
LAW PERSPECTIVE**

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ABSTRACT

Traffic accidents, a problem that is rife in various developed countries and developing countries, especially such as in Indonesia, can be said to be frequent and even many traffic violations. Many people consider that problems and safety when traffic is a trivial matter without thinking about the impact of the actions they do. Traffic accidents, is a problem that is rife in various developed and developing countries, especially such as in Indonesia, it can be said that there are often even many traffic violations. Throughout 2022, the number of traffic accidents in the Lhokseumawe Police Station area increased more than the previous year, which was 110 cases. An increase of approximately 143 cases remains a large number with 77 deaths, 6 serious injuries and 268 minor injuries. So that alternative solutions in Lakalantas cases are often resolved using alternative Mediation outside the court (Restorative Justice) through a peace process carried out by both parties, this is in accordance with Islamic Law which prioritizes the best solution, namely the peace agreement of both parties to resolve disputes with peace efforts. The results of the research conducted are known that the application of restorative justice to traffic accidents that cause death at the Lhokseumawe Police Station Islamic Criminal Law Perspective is guided by Law No.22 of 2009 concerning Road Traffic and Transportation, and also Police Regulation No.8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. Where the two agreed to settle disputes with the Restorative Justice system through mediation. Because in the case of the accident, there is no intentional element so that the settlement of the case can be resolved in a familial manner. Islamic Penal Law holds that the Restorative Justice system is related to the concept of forgiveness or the concept of Al-Afwu. By going through the process of Islah or Al-Shulhu which is the process of solving things by familial means. In accordance with the meaning of Islah which means "to fix" in this case the case, and aims to achieve peace. In accordance with the concept of Al-Shulhu.

Keywords: *Traffic Accidents, Restorative Justice, Mediation, Police*

INTRODUCTION

Law Number 22 of 2009 concerning Road Traffic and Transportation which was formed has the aim of realizing safe, orderly, smooth and integrated traffic and road transportation services with other transportation capital to encourage the national economy and the realization of ethics in traffic and the realization of law enforcement and legal certainty for the community. With the existence of traffic and road transportation laws, it can balance the current role of transportation with problems regarding transportation.¹

In Article 107 paragraph (2) of UULLAJ which reads: "Everyone who drives a motorcycle on the road without turning on the main lights during the day as referred to in Article 107 paragraph (2) shall be punished with a maximum imprisonment of 15 (fifteen) days or a maximum fine of Rp100,000.00 (one hundred thousand rupiah)". Furthermore, in Article 310 paragraph (4) of Law Number 22 of 2009 which reads: "In the event of an accident as referred to in paragraph (3) that results in the death of another person, it shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp10,000,000.00 (ten million rupiah)".

Traffic accidents are a problem that is rife in various developed and developing countries, especially in Indonesia. For example, not obeying the rules of traffic signs, driving drunk or drowsy and even vehicle accidents that exceed the car's capacity load so that it makes car tires explode when driving, unable to climb when passing steep climbs. And other factors such as broken tires, long brakes, potholes.

Data from the Lhokseumawe Police Station recorded that, throughout 2022, the number of traffic accidents in the Lhokseumawe Police Station area increased from the previous year, which was 110 cases. An increase of approximately 143 cases remains a large number with 74 deaths, 6 serious injuries and 268 minor injuries.²

The resolution of traffic violation cases using a restorative system has been widely applied in various regions in Indonesia, but in its implementation it is only related to a few cases included in the complaint offense. Moreover, in practice this approach system is often applied or used in cases outside the normative rules, such as the case of traffic cases that can be resolved by familial means. The role of law enforcement in this regard deserves appreciation in implementing this restorative justice system even though there are still many law enforcement officials who still have a retributive view.

Islamic criminal law, Abdur Rahman explained that threats in certain criminal acts can be replaced when getting forgiveness directly from the victim or from the family of the victim of the crime.³ Due to the many cases of Traffic Accidents (Lakalantas) that occur, making the case is now starting to be in the spotlight where alternative solutions in Lakalantas cases are often resolved using alternative *Penal* Mediation in criminal language or by means outside the court (*Restorative Justice*) without going through the legal process with a peace carried out by both parties. Related to that, Islam itself also has 3 levels of punishment in punishing perpetrators of criminal acts, namely the first criminal equality, the second forgiveness, and the third is *Diyat* (fine). So in this case it

¹ Rizki Prananda Tambunan, "Juridical Review of the Application of the Concept of Restorative Justice in Traffic Accidents," *Journal of Mahupiki USU Medan* 2, no. 1 (2014): 6.

² Hamdani Hamdani Efendi Efendi, Yulia Yulia, "POLICE ACTIONS IN IMPLEMENTING RESTORATIVE JUSTICE AGAINST PERPETRATORS OF TRAFFIC VIOLATIONS THAT CAUSE TRAFFIC ACCIDENTS (RESEARCH STUDY AT LHOKEUMAWA POLICE STATION)," *SULOH FH UNIMAL* 31, No. 4 (2022): 771-76, <https://doi.org/https://doi.org/10.29103/sjp.v10i2.9160>.

³ Abdur Rahman, "Criminal Acts in Islamic Shari'a," in *Hukum Islam-Criminal*, Cet.1 (Jakarta: Rineka Cipta, 1992).

shows that Islam recognizes two paradigms in solving criminal cases, namely the litigation paradigm and the non-litigation paradigm.⁴

Berdasarkan latar belakang tersebut, penulis tertarik menyusun karya tulis ilmiah dengan judul: "Penerapan Restoratif Justice Terhadap Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Kematian Di Polres Lhokseumawe Perspektif Hukum Pidana Islam"

RESEARCH METHODS

Research Method is an approach to what and how will be applied in research.⁵ The research method aims to study one or several symptoms, by analyzing them and by conducting an in-depth examination of the fact, for later by that fact.⁶

The research method used in this study is Empirical, with a normative juridical approach that will be described with the phenomena that have occurred. The research location is at the Lhokseumawe City Resort Police (Polres).

DISCUSSION

1. *Understanding Restorative Justice*

Restorative Justice is an alternative approach in solving criminal cases that focuses on recovery or restoration to victims who suffer from crime by providing compensation to victims and facilitating peace between the parties. *Restorative Justice* involves the perpetrator, victim, perpetrator/victim's family, and other related parties.

Restorative Justice is also explained in several laws and regulations in Indonesia such as Article 1 point 6 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System and Article 1 point 3 of State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on *Restorative Justice*.

Restorative Justice is one of the principles of law enforcement in solving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enactment, but its implementation in the Indonesian criminal justice system has not been carried out optimally.⁷

The concept of *restorative justice* is fundamentally simple. The measure of justice is no longer based on appropriate retribution from victim to perpetrator (whether physically, psychologically, or punished), but that painful acts are healed by providing support to the victim

⁴ Nor Soleh, "RESTORATIVE JUSTICE IN ISLAMIC CRIMINAL LAW AND ITS CONTRIBUTION TO MATERIAL CRIMINAL LAW REFORM IN INDONESIA," *Isti'dal Journal of Islamic Law Studies* 2, no. 2 (2015): 126, <https://doi.org/https://doi.org/10.34001/istidal.v2i2.640>.

⁵ Anonimus, *Academic Handbook*, ed. Unimal Faculty of Law (Lhokseumawe: Unimal Press, 2016).

⁶ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: University of Indonesia (UI-Press), 1986).

⁷ Apong Herlina, "Protection of Children Against the Law," 2004, [https://repository.iainkudus.ac.id/8831/5/5.CHAPTER II.pdf](https://repository.iainkudus.ac.id/8831/5/5.CHAPTER%20II.pdf).

and requiring the perpetrator to take responsibility with the help of family and community when necessary.⁸

According to Komaria E. Sapardjaja, the basic principles contained in the restorative justice approach are:⁹

1. Justice demanded is the existence of recovery efforts for the aggrieved party;
2. Anyone involved and affected by a criminal offence should have the opportunity to participate fully in following up;
3. The government plays a role in creating public order while the people establish and maintain peace.

Based on this opinion, indicators in *restorative justice* can be seen from the participation of perpetrators, victims, the community and professionals or law enforcers. Each of them plays the following roles:

1. Perpetrator: The perpetrator is active to restore the losses of the victim and the community, thus he must face the victim/representative of the victim and face the community.
2. Victim: Actively involved in all stages or processes of case resolution and plays an active role in mediation and determines sanctions for perpetrators.
3. Community: Involved as a mediator, tasked with developing community services and providing opportunities for perpetrators as a form of *reparative obligations*, helping victims and supporting the fulfillment of perpetrators' obligations.
4. Law enforcement professionals or officials: facilitate mediation, guarantee restorative implementation, *develop creative/restorative community service options and involve community members in the case resolution process*.¹⁰

1. Definition of Traffic Accidents

Traffic is one of the means of community communication that plays a vital role in facilitating the development that we carry out. Because with this traffic, it facilitates access for the community to carry out their activities for the fulfillment of their economy. Without traffic, you can imagine how difficult it would be for us to get to work or do work related to the use of highways. There is not a single job that does not escape the use of traffic.¹¹

According to W.J.S. Poerwodarminto¹² that traffic is a round trip, about traveling on the road and so on and the transportation between a place. Subekti also gave a definition of traffic, he suggested that traffic is all the use of public roads with a transportation. These definitions and definitions can be concluded that traffic in a broad sense is any thing related to public road facilities as the main means for the goals to be achieved. In addition to conclusions, the definition of traffic in

⁸ Strong Puji Prayitno, "RESTORATIVE JUSTICE FOR JUSTICE IN INDONESIA (Philosophical Juridical Perspective in Law Enforcement In Concreto)," *Journal of Legal Dynamics* 12, no. 3 (2012): 407-20, <https://doi.org/10.20884/1.jdh.2012.12.3.116>.

⁹ Ibid, Prayitno.

¹⁰ Nur Rochaeti, "Restorative Justice in the Juvenile Criminal Justice System in Indonesia" (Purwokerto, 2016).

¹¹ Umi Enggarsasi & Nur Khalimatus Sa'diyah, "STUDY OF THE FACTORS THAT CAUSE TRAFFIC ACCIDENTS IN AN EFFORT TO IMPROVE TRAFFIC ACCIDENT PREVENTION," *Perspective* 22, no. 3 (2017): 2-5, <https://erepository.uwks.ac.id/9672/1/2>. Study of the factors that cause traffic accidents in an effort to improve the prevention of traffic accidents.pdf.

¹² Poerwadarminta W.J.S, *General Dictionary Indonesian* (Jakarta: Balai Pustaka, 1993).

a narrow sense is the relationship between humans with or without being accompanied by a means of moving from one place to another using the road as a space for movement.

Traffic characteristics according to Wolfgang. S. Hamburg as follows:¹³

1. Traffic is a complex and dynamic system involving various elements, such as vehicles, drivers, pedestrians, and road infrastructure.
2. Traffic has different characteristics, depending on the time, place, and environmental conditions. These characteristics include traffic volume, speed, density, and accident rate.
3. Traffic volume is the number of vehicles passing at a given time, while speed is the average speed of vehicles in a given time.
4. Traffic density is the number of vehicles passing within a certain distance, while accident rate is the number of accidents that occur in a certain time.
5. Environmental factors, such as weather, time of day, and road conditions, can affect traffic characteristics. For example, traffic on rainy days tends to be slower and heavier than traffic on sunny days.

An accident is a legal event of carriage in the form of an event or disaster, which is not desired by the parties, occurs before, during or after the implementation of transportation due to human actions or damage to the means of transportation so as to cause material, physical, life, or loss of livelihood for the passenger, not the passenger, the owner of the goods, or the carrier. Transportation accidents are events or events of operation of facilities that result in damage to transportation facilities, such as casualties and / or urgency of property.

1. Application of Restorative Justice to Traffic Accidents Causing Death at Lhokseumawe Police Station Islamic Criminal Law Perspective

Traffic accident cases in all regions in Indonesia often occur every day and even every hour wherever they are. It is undeniable that traffic accidents are difficult to avoid, because the cause of the traffic accident itself is due to the "*Culpa*" negligence of the person who has a traffic accident. Due to the large number of traffic accidents, the police are given the authority to solve the case by means of *Restorative Justice* or with the Restoative Justice system. In accordance with the Police Regulation of the Republic of Indonesia No.8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice Article 1. Just like what the Lhokseumawe Police did to solve traffic accident cases in the jurisdiction of Lhokseumawe City.

In handling traffic accident cases, Lhokseumawe Police handles Traffic Violations in accordance with the prevailing laws and regulations with the existence of this Restorative Justice System *provides an appropriate concept or way of solving that can be followed by all parties involved in traffic violation criminal cases, the application of Restorative Justice* More views on solving cases by means of deliberation on both sides, in addition to fulfilling responsibility for the actions of the perpetrator to the victim.

Settlement of traffic accident cases is a process that can be carried out through the judicial process or outside the court. In its development, the resolution of traffic accident cases that cause the death of this person does not have to be resolved by means of the general judicial process which is a case resolution process that has existed for a long time, the development of ways to resolve traffic accidents has also helped law enforcement by solving traffic accident cases outside the judicial process. Therefore, the existence of the *Restorative Justice* system as an alternative to solving criminal cases is very likely to be used to solve traffic accident cases that cause the death of

¹³ <https://eprints.umm.ac.id/71715/2/BAB%20II.pdf>. Retrieved September 4, 2023.

people to be resolved faster, even so the resolution of this case is determined by the awareness and knowledge of the community itself and also law enforcement officials.

The implementation of *the Restorative Justice* system as an alternative in solving traffic accident cases that cause the death of people at the Lhokseumawe City Police Station, makes the reduction in case accumulation reduced because the Restorative Justice system is very easy to apply to the community in general. By looking at the procedures for how the *Restorative Justice* system can be applied in solving problems in accordance with applicable laws and regulations. This is done in accordance with Perpol No.8 of 2021, which explains the requirements for the implementation of *Restorative Justice* are twofold, namely Material and Formil requirements.

Material requirements are as stated in Article 4 of Perpol No.8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice as follows:

1. Does not cause unrest and/or rejection from the community
2. No impact on social conflict
3. It has no potential to divide the nation
4. No Radicalism and Separatism
5. Not a repeat offender based on a Court decision
6. Not a criminal act of Terrorism, a criminal act against state security,
7. Criminal acts of corruption and criminal acts against people's lives.

While Formil's requirements, there are two conditions that must be met for the application of *Restorative Justice* are as follows:

1. Peace of both sides, except for Drug Crimes
2. Fulfillment of the rights of victims and responsibilities of perpetrators, except for Drug Crimes

So the implementation of *Restorative Justice* must meet the requirements set above in order to find a fair agreement between the two parties. Usually when called the related party will come alone or with the family, which is one type of *Restorative Justice* solution, namely "*Victim Offender Mediation*" which in this system mediation carried out is to place victims and perpetrators as part of the criminal justice system. Then if the victim and perpetrator when called for the implementation of Mediation bring other parties (family, friends or closest people), then this type of *Restorative Justice* is included in the settlement using the "*Family Group Conferencing*" (FGC) system.

In Islam *Restorative Justice* in the explanation in chapter ii is said to be related to the concept of *Al-'Afwu* Forgiving Punishment, because when a case has reached an agreement, it is certain that the disputing party has reconciled and the victim who feels aggrieved has forgiven the perpetrator who committed unlawful acts. This forgiveness is the purpose of *Al-'Afwu*'s concept of punishment in Islamic Penal Law.¹⁴ One of the concepts related to the concept of forgiveness *Al-'Afwu* is *Islah* which means "to repair" or *Al-Shulhu* which is the same as *Restorative Justice* which aims to achieve justice and peace. The term *Al-Shulhu* itself is an attempt to reconcile two parties who are in dispute, quarrel with each other or even try to defend their rights, with the aim that the problem or dispute will end.

In the peace, there were two parties who had previously experienced disputes with traffic accident cases that caused the death of people, then the parties related to the accident agreed to

¹⁴ Yusi Amdani and Liza Agneta Krisna, "The Concept of Apologizing as Punishment in Criminal Cases," *Ius Quia Iustum Law Journal* 26, no. 1 (2019): 67-90, <https://doi.org/10.20885/iustum.vol26.iss1.art4>.

reconcile each other and release their demands. From the case of traffic accidents that when the perpetrator violates and causes an accident due to negligence "*Culpa*" can be punished. Because both parties agree to be resolved by means of Restorative Justice, the *implementation of Restorative Justice in this case is by mediation, like a person who becomes Hakam, the police must pay attention to the principles and also the principles Restorative Justice* in order to reach agreement and also peace as explained in the Qur'an Surat Al-Hujurat verse 10 which means: *verily believers are brothers, therefore reconcile between your two brothers (who are in dispute) and be devoted to Allah so that you may have mercy. (QS. Al-Hujurat :10)*

In the explanation above, peace is a goal that must be achieved so that in the settlement of this case no party is harmed between the victims and the perpetrators of the traffic accident itself. Because in Islam itself forbids grudges with someone even though that person harms us, because when there are problems or problems between people with one another, as much as possible or recommended to be resolved properly so as to create peace between both parties. So in solving accident cases with the *Restorative Justice* system when an agreement has been reached, the parties related to the case are required to make a peace statement to be proof that the problem has been resolved.

CONCLUSION

Penerapan restoratif justice terhadap tindak pidana kecelakaan lalu lintas yang menyebabkan kematian di Polres Lhokseumawe Perspektif Hukum Pidana Islam yakni dengan berpedoman pada Undang-undang No.22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan, dan juga Peraturan Kepolisian No.8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif. Dimana keduanya bersepakat untuk menyelesaikan perselisihan dengan sistem Restorative Justice jalan mediasi. karena dalam kasus kecelakaan tersebut tidak ditemukannya unsur kesengajaan sehingga penyelesaian perkara dapat diselesaikan secara kekeluargaan. Hukum Pidana Islam berpandangan bahwasanya sistem Restorative Justice berkaitan dengan konsep pemaafan atau konsep Al-Afwu. Dengan melalui proses Islah atau Al-Shulhu yang merupakan proses penyelesaian perkara dengan jalan kekeluargaan. Sesuai dengan makna Islah yang berarti "memperbaiki" dalam hal ini kasus perkara, dan bertujuan untuk mencapai perdamaian. Sesuai dengan konsep Al-Shulhu.

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