



LEGAL ANALYSIS OF THE APPLICATION OF RESTORATIVE JUSTICE TOWARDS TRAFFIC ACCIDENT CRIMINAL ACTS RESULTING IN DEATH ACCORDING TO LAW NUMBER 22 OF 2009 CONCERNING TRAFFIC AND ROAD TRANSPORTATION (RESEARCH STUDY IN BATAM CITY)

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Received: 03/08/2026 | Revised: 10/08/2026 | Accepted: 29/08/2026 | Published: 11/09/2026

Abstract

Law enforcement against traffic accident crimes resulting in death based on Article 310 paragraph (4) of Law No. 22 of 2009 in Batam City is still dominated by a punitive-retributive approach. This condition triggers a gap phenomenon with the paradigm of restorative justice as mandated in the new sentencing objectives of Law No. 1 of 2023 on the National Criminal Code. This study aims to analyze the legal regulation of fatal traffic accidents, the actual implementation of restorative justice in Batam City, as well as the obstacles and efforts to address them. The research method used is normative-empirical law with statutory, conceptual, and empirical approaches. The research data are sourced from secondary legal materials as well as primary data obtained through in-depth interviews with investigators from Satlantas Polresta Bareleng, prosecutors from Kejari Batam, judges from PN Batam, legal counsel, and members of the Lembaga Adat Melayu (LAM) Kota Batam board. Research findings indicate that the current legal framework has produced vertical normative tensions and a lack of operational laws at the statutory level. The implementation of restorative justice in Batam City has not been optimal, with only 37 out of a total of 275 fatal cases resolved between 2023–2025. Peace agreements and material compensation are generally reduced merely to mitigating factors in court. The main obstacles stem from ambiguous legal provisions, sectoral egos and structural fears among law enforcement officials of ethical sanctions, limited integrated mediation facilities, as well as a culture of transactional law. Efforts undertaken include drafting a regional Integrated Joint Decree (SKB) and involving traditional community leaders. It is recommended that lawmakers revise the UU LLAJ to synchronize with the New KUHP, that Forkopimda Batam immediately ratify a local Integrated SKB as a legal umbrella for officials' discretion, and that the institutionalization of LAM Batam's role as a neutral mediator be pursued to prevent economic discrimination.

Keywords: Restorative Justice, Traffic Accidents, Article 310 paragraph (4) of the LLAJ Law, Batam City. .

INTRODUCTION

Indonesia, as a nation governed by the rule of law, places criminal law as an instrument for maintaining public order, public safety, and protecting the right to life. In the context of traffic, accidents resulting in death are not merely technical transportation issues, but are legal events with criminal, social, and humanitarian dimensions. Traffic accidents resulting in death are regulated in Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation. This provision stipulates that driver negligence resulting in death can be subject to a maximum prison sentence of six years and/or a fine. This act is a criminal act due to negligence (culpa), namely there is no intention to kill but occurs due to carelessness or a violation of safety obligations. Developments in modern criminal law demonstrate a shift from a retaliatory approach to restorative justice . This approach emphasizes victim recovery, perpetrator accountability, and social conflict resolution. The 2023 National Criminal Code also directs punishment not only to provide a deterrent effect but also to resolve conflict and restore social balance.

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The application of restorative justice in traffic accidents resulting in death remains controversial. On the one hand, the state must maintain legal certainty and protect the victim's right to life. On the other hand, there is a need to consider forgiveness from the victim's family, the perpetrator's responsibility, and social recovery. In Batam City, data from 2023–2025 shows 275 traffic accidents resulting in death. Of these, only 37 were resolved through restorative justice, while 238 cases were processed through litigation. This situation demonstrates the dominance of conventional criminal justice approaches over restorative ones.

The main problem of the research lies in the gap between legal expectations (*das sollen*) which encourage a humanist approach through restorative justice and field practice (*das sein*) which still faces limited norms and unclear boundaries of the application of RJ in cases resulting in death. Based on these conditions, research was conducted to analyze the application of restorative justice to criminal acts of traffic accidents resulting in death based on Law Number 22 of 2009 concerning Traffic and Road Transportation, with a research study in Batam City.

LITERATURE REVIEW

1. Theory of Justice (Grand Theory)

John Rawls's theory of justice serves as the philosophical foundation for this research. Rawls views justice not only as a matter of final outcomes but also as a fair decision-making process. This theory emphasizes the protection of rights, the balance of interests, and substantive justice in the legal system.

In this study, the theory of justice is used to assess whether the application of **restorative justice** to criminal acts of traffic accidents resulting in death has reflected a balance between:

- victims' rights,
- responsibility of the perpetrator,
- public interest.

Aristotle's concept of justice is also used through two forms of justice:

- **Distributive justice**, namely the protection of rights and responsibilities proportionally.
- **Corrective justice**, namely recovery due to losses or violations that occur.

2. Law Enforcement Theory (Middle Theory)

The research uses Soerjono Soekanto's theory which explains that the success of law enforcement is influenced by five factors:

1. Legal factors.
2. Law enforcement factors.
3. Facilities or infrastructure factors.
4. Community factors.
5. Legal culture factors.

This theory is used to analyze how regulations regarding traffic accidents and restorative justice are applied by law enforcement in Batam City. This theory connects the value of justice with the practice of law enforcement in the field.

3. Restorative Justice Theory (Applied Theory)

Howard Zehr's restorative justice theory is used to analyze the application of criminal case resolution. This theory views crime as a violation of human beings and social relationships, not simply a violation of the state.

The restorative justice approach focuses on:

- victim recovery,
- responsibility of the perpetrator,
- community involvement,
- reconciliation of social relations.

In research, this theory is used to assess whether the resolution of fatal traffic accident cases through peace, compensation, and forgiveness actually provides recovery or is merely a way to stop the case.

Research Conceptual Framework

The main concepts analyzed include:

1. Juridical analysis

Reviewing legal norms, interpretation of rules, and application of law in practice, particularly regarding Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation.

2. Implementation of law

It is the process of implementing legal norms by law enforcement officers through investigation, prosecution and judicial processes.

3. Restorative Justice

It is understood as an approach to resolving criminal cases that is oriented towards victim recovery, perpetrator responsibility, and social reconciliation.

4. Traffic accidents and traffic accident crimes

The focus of the research is accidents due to negligence that result in death as stipulated in Article 310 paragraph (4) of the LLAJ Law.

Research Assumptions

The research has three main assumptions:

1. The regulation of traffic accident crimes in Law Number 22 of 2009 is still oriented towards criminal punishment, thus opening up space for the application of restorative justice.
2. The implementation of restorative justice in Batam City has been carried out through mediation, peacemaking, and the provision of compensation, but it has not been optimal because there are no uniform guidelines.
3. Obstacles to the implementation of restorative justice stem from legal regulations, the understanding of officials, and community culture, so that clearer synchronization of regulations and implementation mechanisms is needed.

Core of the research:

This research analyzes whether the application of restorative justice in traffic accidents that cause death in Batam City has been able to create a balance between **justice for victims, the responsibility of perpetrators, legal certainty, and the interests of society**.

METHOD

A. Type of Research

The research uses a **normative-empirical legal method**, combining the study of legal norms with an analysis of the application of law in practice. Normative research examines legal regulations, principles, doctrines, and theories, while empirical research observes the implementation of the law by law enforcement officials in the field.

This method was chosen because the research not only analyzed the provisions of **Article 310 paragraph (4) of Law Number 22 of 2009** and the restorative justice policy, but also looked at its application in investigations, prosecutions and examinations of cases in Batam City.

B. Research Approach

The research used three approaches:

1. Statute Approach

Used to review legal regulations related to fatal traffic accidents and restorative justice, especially Law Number 22 of 2009, the Criminal Code, and restorative justice institutional regulations.

2. Conceptual Approach

Used to analyze legal theories and concepts, such as justice theory, law enforcement theory, and restorative justice theory as the basis for research analysis.

3. Empirical Approach

This study aims to examine the practice of restorative justice implementation by law enforcement officers in Batam City through field research. This approach aims to identify the differences between law in books and law in action.

C. Location and Data Source

The research location is in **Batam City**, specifically the **Barelang Police Traffic Unit**. The research data consists of three sources:

1. Primary Data

Obtained through interviews with police investigators, prosecutors, judges, advocates, and victims' families to find out the practice of implementing restorative justice and perceptions regarding justice and recovery.

2. **Secondary Data**

Derived from laws and regulations, law books, scientific journals, and court decisions relating to fatal traffic accidents.

3. **Tertiary Data**

In the form of legal dictionaries, encyclopedias, and supporting materials to clarify legal terms.

D. Population and Sample

The research population includes all parties involved in resolving fatal traffic accident cases in Batam City, including law enforcement officers, advocates, and victims' families.

The sample was selected using **purposive sampling**, based on relevance and experience. Respondents included:

- Barelang Police Traffic Unit Investigator,
- Public Prosecutor,
- Judge of Batam District Court,
- Advocate,
- The victim's family.

E. Data Collection Techniques

Data collection is done through:

1. **In-depth interview (in-depth interview)**

To explore the experiences and views of officers and related parties regarding the implementation of restorative justice.

2. **Documentation study**

Includes case files, peace letters, investigation reports, prosecutor's demands, and court decisions.

3. **Literature study**

Reviewing regulations, law books, journals, and literature related to restorative justice.

F. Data Analysis

Data analysis uses **juridical qualitative analysis**, namely analyzing the relationship between legal norms and empirical facts regarding the application of restorative justice.

Analysis stages:

1. **Data reduction** → selecting and simplifying relevant data.
2. **Data classification** → grouping data based on legal aspects, restorative justice practices, officers, victims, and perpetrators.
3. **Legal interpretation** → connecting empirical facts with legal rules and theories.
4. **Deductive drawing of conclusions** → drawing conclusions from legal theory and norms towards research cases.

RESULTS AND DISCUSSION

A. Legal Regulations for Traffic Accidents Resulting in Death Based on Law Number 22 of 2009

This study examines the legal provisions regarding criminal acts of traffic accidents resulting in death as regulated in **Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ Law)**. These provisions regulate criminal liability for motor vehicle drivers who, due to their negligence, cause traffic accidents resulting in death.

From a criminal law perspective, a crucial element in the article is the existence of a legal subject in the form of "**every person**." This element refers to individuals who have the capacity to be legally responsible, especially motor vehicle drivers who carry out driving activities on the highway. In research practice in Batam City, legal subjects in fatal traffic accident cases have diverse characteristics, ranging from private vehicle drivers, public transportation drivers, to drivers of heavy vehicles such as industrial container trucks. This condition is influenced by Batam's characteristics as an industrial and commercial area with high vehicle mobility.

From a **restorative justice perspective**, the perpetrator is not only seen as a lawbreaker who must receive punishment, but also as part of a social relationship damaged by the criminal event. In cases of traffic accidents due to negligence, the perpetrator generally does not have the intent to cause death (*mens rea*). Therefore, a solely retaliatory approach to punishment is considered inadequate to achieve substantive justice.

1. Element of Negligence (Culpa) in Fatal Traffic Accidents

The main element in Article 310 of the Traffic and Road Traffic Law is **negligence or omission (culpa)**. Negligence occurs when a person does not intend a consequence, but the consequence arises due to carelessness, lack of vigilance, or disregard for safety standards. In criminal law theory, negligence is divided into:

- **Culpa lata**, namely gross negligence which indicates a high level of error.
- **Culpa levis**, which is minor negligence with a lower level of error.

Based on research findings at the Bareleng Police Traffic Unit, there are differences in determining the level of negligence of the perpetrator. For example, a driver driving at high speed on a busy road can be categorized as gross negligence. Meanwhile, accidents due to limited visibility (blind spots) of large vehicles or certain road conditions often fall into a gray area between minor negligence and unavoidable accidents.

The problem arises because Article 310 paragraph (4) of the Traffic and Road Traffic Law does not provide clear indicators regarding the level of negligence. As a result, law enforcement officers often have difficulty distinguishing between perpetrators with a high level of culpability and those whose accidents occurred due to minor negligence. This situation tends to result in all cases being processed using a formal criminal approach.

When analyzed using justice theory, treating all forms of negligence equally can lead to injustice. Perpetrators who commit minor negligence do not necessarily have the same level of moral culpability as those who clearly disregard road safety. Therefore, restorative justice can be an alternative approach to distinguishing cases based on the degree of culpability and social impact.

2. Elements of Death and Criminal Responsibility

The death of the victim is an element of consequence that distinguishes Article 310 paragraph (4) from other forms of traffic accidents. In criminal law, the relationship between the perpetrator's negligence and the victim's death must be proven through the theory of causality, namely the existence of a causal relationship between the driver's negligent actions and the victim's death.

In practice in Batam City, the consequences of a fatality often generate significant social pressure. The community and the victim's family generally expect severe punishment for the perpetrator for the loss of life. In some cases, even though the victim may have had contributing factors, such as not wearing a helmet or committing a traffic violation, the responsibility is often entirely placed on the driver of the larger vehicle.

However, from a restorative justice perspective, imprisonment is not always the best solution. Punishment cannot bring back the deceased and, in certain circumstances, can create new problems, such as the loss of employment for perpetrators who also have family responsibilities. Therefore, a restorative approach offers the concept of healing through social responsibility, compensation, and reconciliation.

3. The Position of the LLAJ Law as Lex Specialis and Obstacles to Restorative Justice

Law Number 22 of 2009 is considered a special criminal law (*lex specialis*) compared to the Criminal Code, which is a general criminal law. Article 310 paragraph (4) stipulates a maximum penalty of 6 years' imprisonment and/or a maximum fine of IDR 12 million. This offense is considered an ordinary offense, so the case must still be processed even if the victim and perpetrator have reconciled.

Research results show that law enforcement officials in Batam City face obstacles when implementing restorative justice. Investigators and prosecutors often feel limited by the lack of a legal basis at the level of a law that explicitly authorizes the dismissal of fatal accident cases through restorative mechanisms.

This situation creates a gap between modern legal policies that require restorative resolution and law enforcement practices that still emphasize formal legal certainty. Despite the existence of Police Regulation No. 8 of 2021 and Prosecutor's Regulation No. 15 of 2020, their hierarchical position remains subordinate to the law and thus cannot fully address the imperative nature of the Traffic and Traffic Law.

B. Implementation of Restorative Justice in Fatal Traffic Accidents in Batam City

The study analyzed the application of restorative justice through data on traffic accidents resulting in death in Batam City between 2023 and 2025. Batam has a high level of mobility due to its characteristics as an industrial, commercial, port, and worker residential area. These conditions increase the potential for traffic accidents.

Research data shows:

Year	Total Cases	RJ Investigation	RJ Prosecution	Court Path
2023	85 cases	8 cases	4 cases	73 cases
2024	92 cases	10 cases	5 cases	77 cases
2025	98 cases	7 cases	3 cases	88 cases
Total	275 cases	25 cases	12 cases	238 cases

Based on the data:

- Settlement through restorative justice at the investigation level was only **9.09%** .
- Settlement through restorative justice at the prosecution level was only **4.36%** .
- The majority of cases, namely **86.55%** , continued through the court process.

This shows that restorative justice has not yet become the primary mechanism for resolving fatal traffic accidents. Obstacles arise not only from the parties' desires, but also from the legal system and the vigilance of authorities.

C. Obstacles to the Implementation of Restorative Justice

1. Legal Factor Obstacles

The first obstacle is a discrepancy between regulations. The LLAJ Law provides a maximum prison sentence of 6 years, while Prosecutor's Office Regulation Number 15 of 2020 limits restorative justice to crimes with a maximum sentence of 5 years. This discrepancy places cases under Article 310 paragraph (4) outside the scope of restorative justice according to prosecutorial regulations.

In addition, the phrase "not causing public unrest" in restorative justice regulations is considered to have no objective parameters, making it difficult for authorities to apply it uniformly.

2. Obstacles from Law Enforcement Officers

Law enforcement officials face a dilemma between upholding substantive justice and maintaining formal legal certainty. Investigators and prosecutors worry that dismissing cases could lead to accusations of abuse of authority, ethical violations, or alleged non-transparent practices.

As a result, authorities prefer litigation as it is considered safer administratively and legally. This situation results in the goal of restorative justice to resolve social conflict not being optimally implemented.

CONCLUSION

1. Current legal regulations for traffic accidents resulting in death are still strongly oriented towards the retributive punishment paradigm (*imperative lex specialis*). This creates a conflict of norms with institutional regulations (Indonesian National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Republic of Indonesia Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice), which have lower penalty limits. This also demonstrates that current regulations have not been operationally synchronized with the paradigm of restoring social balance promoted by the new criminal law umbrella.
2. The application of restorative justice in fatal accident cases in Batam City has proven to be suboptimal, with most cases still being referred to litigation (court). The practice of reconciliation and compensation to victims' families is often reduced to merely administrative requirements to mitigate sentences in court, rather than as an instrument for dismissal outside the courtroom (*afdoening buiten proses*) that fully restores substantive rights and justice.
3. The main obstacles include a legal vacuum at the statutory level, structural fears and sectoral egos of officials regarding ethical/bureaucratic sanctions, the absence of an integrated administrative system, and a community culture that is vulnerable to legal commercialization and public pressure. Efforts initiated in Batam City include the formulation of an Integrated Joint Decree (SKB) from the Regional Leadership Communication Forum (Forkopimda) as a local legal umbrella, the implementation of cross-agency case titles, and the restoration of the role of community leaders and the Malay Customary Institution (LAM) as social mediators.

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