

***The Criminal Law Enforcement Of Negligence  
On The Part Of Motor Vehicle Drivers Resulting  
In Traffic Accidents***

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***Abstract***

*One of the traffic problems in Indonesia is the high number of road accidents caused by driver negligence. Therefore, law enforcement is one of the efforts to address the problem of road accidents. In current practice, traffic law enforcement does not only refer to criminal sanctions as in Law Number 22 Year 2009 on Road Traffic and Transport, but also uses restorative justice methods. This article discusses how the law is enforced in relation to traffic offences caused by the negligence of drivers who cause traffic accidents, and the obstacles in enforcing the law. This is legal research with statute and conceptual approach. The results revealed that law enforcement against negligence of motor vehicle drivers resulting in accidents is conducted with a repressive approach through restorative justice based on police discretionary authority granted through the Police Law. Specifically, the restorative justice approach is regulated through Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the handling of criminal acts based on restorative justice. However, its application is hindered by legal obstacles such as legal problem, law enforcers, citizen and culture. It is therefore necessary to enhance the capabilities and qualifications of law enforcement personnel in accordance with their respective areas of responsibility. This may be achieved through formal education or specialised training, with the objective of facilitating law enforcement through a restorative justice approach.*

**Keywords:** *accident; negligence; law enforcement; restorative justice*

**A. INTRODUCTION**

**1. Background**

Law and society will always intersect. The law will affect the social conditions of a country and vice versa, so social conditions can also influence the law. The two should be able to complement each other. That way, legal and social harmonization will be created that will participate in creating an orderly and peaceful society.

As is the case when it comes to traffic on the highway, it is essential to understand

the law and society. Various traffic violations that occur can lead to the risk of accidents, material losses, injuries, and even loss of life. A risk that must be found a solution to the main problem so that accidents do not occur or maybe minimize traffic accidents.

A traffic accident is an unlawful act that is one of the elements of a criminal act. It can be seen that traffic accidents and traffic violations have different concepts but can be related to each other. A traffic violation can be interpreted as an action by a motorist in driving a driving device, namely a motorized vehicle or not, and pedestrians who violate existing and currently applicable traffic laws and regulations.<sup>1</sup>

One form of effort to overcome the problem of traffic accidents is law enforcement efforts. With law enforcement, it is hoped that it will be able to suppress the occurrence or recurrence of traffic accidents, which of course suppresses the occurrence of traffic violations or crimes. Criminal law enforcement in the context of traffic violations aims to enforce the rules and regulations set to maintain traffic safety and smoothness. The punishment given to traffic violators is expected to provide a deterrent effect and encourage the public to comply with existing rules.

In Indonesia , the current traffic condition is still quite concerning. We still often encounter the negligence of highway users in traffic every day, causing many accidents which are still relatively high. One of the factors that has the biggest contribution as the cause of the above conditions is the human factor, compared to other causative factors such as road factors or vehicle factors.

The level of understanding and discipline of the regulations and manners in traffic that is lacking from road users is something that must receive special attention in an effort to solve problems in the field of traffic. Human beings are said to be pedestrians or drivers on the highway, which is the main element of traffic actors, in their appearance is influenced by the psychological condition of each individual, especially those related to discipline and physical conditions of the surrounding environment.

The lack of caution and carelessness carried out by the driver can often cause victims, whether the victim has or suffers minor injuries, serious injuries or the victim dies and does not rule out the possibility of taking the driver's life. Some of these traffic

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<sup>1</sup> Lendrie Adi P. Rembet, "The Effectiveness of Criminal Law Enforcement in Handling Traffic Violations", *Journal of JURRISH* 2, no. 2 (July 2023): 180. <https://doi.org/10.55606/jurrish.v2i2.1278>.

accidents can actually be avoided if road users can behave disciplined and always be careful in driving.<sup>2</sup>

The rules on obligations for motorists on the highway have actually been clearly regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law). However, in reality, the problem reappears when the element of driver negligence is also involved in the occurrence of an accident. A negligence that causes accidents and also losses up to the loss of life. However, in law enforcement, law enforcement officials experience obstacles faced. Apart from the legal factors in the LLAJ Law that do not regulate law enforcement in the event of negligence, another factor in law enforcement is the law enforcement factor itself which still needs to understand more about the concept in the rule of law.

## **2. Problem Formulation**

Based on the description of the background of the problem above, the problems in this study are:

- a. How is law enforcement in traffic violations caused by the negligence of motorists who cause traffic accidents?
- b. What are the obstacles in law enforcement against the negligence of motorists who cause traffic accidents?

## **3. Research Methods**

The type of research used in this article is Normative Juridical Research, which is interpreted as a science that has a sui generis nature with the focus of the study being positive law which is a law that applies at a certain time and place. The normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research.

## **B. DISCUSSION**

### **1. Law Enforcement Theory**

Soerjono Soekanto explained that the core meaning of law enforcement lies in the

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<sup>2</sup> Rinaldi Putra Anwar, "Criminal Law Enforcement Against Negligence of Motor Vehicle Drivers Resulting in Traffic Accidents", *Philosophia Law Review* 1, no. 2 (2022): 167.

activity of harmonizing the relationship of values described in the principles that are stable and embodied and the attitude of action as a series of elaboration of the final stage of values, to create, maintain and maintain the peace of life.<sup>3</sup>

It can be understood that the concept of law enforcement as mentioned above is not limited to the implementation of legal norms in laws and regulations, but more than that. That law enforcement has a broader meaning, namely as a form of elaboration of values in the rules as the goal to be achieved by the law, namely creating, maintaining and maintaining the peace of life. That's where the law plays a role in shaping an orderly, peaceful society within the framework of law.

Laws are basically made to create order and peace in society, therefore laws must be enforced. Law enforcement is the process of implementing efforts to uphold or function legal norms in real terms as a guideline for behavior in legal relationships in the life of society and the state. This means that here the law acquires its existence not only as a rule in wishful thinking but rather in its own functioning.

The law acquires its existence when there is or there is a violation of the provisions of the law itself. Here the role of law to protect human rights and interests is carried out. In order for human interests to be protected, the law must be implemented. Law enforcement can take place normally, peacefully, but it can also occur due to violations of the law. In this case, the law that has been violated must be enforced. It is through this law enforcement that the law becomes a reality.

Thus, the conception of law enforcement is to harmonize the relationship of values in the rules and norms of life by realizing an attitude of action as a series of elaboration of values in the final stage, to create, maintain and maintain peace in life. To realize all of this to appear more concrete and real, a further explanation is needed in practice.

According to Lawrence Meir Friedman, the success or failure of law enforcement depends on: 1.) Legal Substance, 2.) Legal Structure/Legal Institution, and 3.) Legal Culture.<sup>4</sup> Furthermore, Lawrence M. Friedman stated the following:

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<sup>3</sup> Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: PT. Raja Grafindo Persada, 2002), 5.

<sup>4</sup> Lawrence M. Friedman, *The Legal System in the Perspective of Social Sciences*, *The Legal System: A Social Science Perspective*, (Bandung: Nusa Media, 2009), 16.

*"The substance is composed of substantive rules and rules about how institutions should behave. Structure and substance are real components of a legal system, but they are at best a blueprint or design, not a working machine."<sup>5</sup>*

Legal substance is the entire legal rule, both written and unwritten, including legal principles and norms as well as court decisions that are used as a handle by the community and the government resulting from the legal system. Legal substance includes legal material which is outlined in laws and regulations. The substance of the law, which is the content of the law itself, means that the content of the law must be something that aims to create justice and can be applied in society.<sup>6</sup>

The legal structure is the legal institution that supports the upholding of the legal system. This section deals with the legal order, legal institutions, law enforcement officials and their authorities, legal apparatus, and their processes and performance in implementing and enforcing the law. A legal structure that cannot move the legal system will cause non-compliance with the law. This has an influence on the legal culture of the community.<sup>7</sup> In Indonesia, the legal structure based on Law Number 8 of 1981 concerning the Criminal Procedure Law includes the Police, the Prosecutor's Office, the Court and the Criminal Enforcement Agency (Lapas). The authority of law enforcement agencies is guaranteed by law. So that in carrying out their duties and responsibilities regardless of the influence of government power and other influences.

Legal culture, according to Lawrence M. Friedman, is a human attitude towards the law and the legal system, its beliefs, values, thoughts, and expectations. Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or abused. Legal culture is closely related to people's legal awareness. The higher the community's legal awareness, the better a legal culture will be created and can change the people's mindset regarding the law so far.<sup>8</sup> In simple terms, the level of community compliance with the law is one of the indicators of the

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<sup>5</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, (New York: Russel Sage Foundation, 1975), 15.

<sup>6</sup> Evy Flamboyan Minanda, "Certainty of Social Welfare Law Reform in the Face of Economic Recession with the Perspective of the Principle of Justice", *National Law Magazine* 53, no. 2, (2023): 254 <https://doi.org/10.33331/mhn.v53i2.307>.

<sup>7</sup> Lutfil Ansori, "Law Enforcement Reform from the Perspective of Progressive Law", *Juridical Journal* 4, no. 2, (2017): 148-163.

<sup>8</sup> Muhapsak Hendra Putra and Neni Vesna Madjid, "Implementation of *Electronic Traffic Law Enforcement* (ETLE) Against Traffic Violations in Padang City", *UNES Journal of Swara Justisia* 7, no. 4 (January, 2024): 1358, <https://doi.org/10.31933/ujsj.v7i4.448>.

functioning of the law.

## 2. Traffic Crime in the Context of Driver Negligence

Criminal acts come from a term known in Dutch criminal law, namely *Strafbaar feit* which consists of three words, namely *straf*, *baar* and *feit*. *Straf* is translated as criminal and legal, *baar* is translated as can or permissible, while *feit* is translated as actions, events, offenses and deeds.<sup>9</sup>

According to Simons, a criminal act is an unlawful act that has been committed intentionally or unintentionally by a person who can be held accountable for his actions and which has been declared a punishable act by law.<sup>10</sup> While Moeljatno defines a criminal act as an act that is prohibited by a legal rule, the prohibition is accompanied by a threat (sanction) in the form of a certain criminal penalty for anyone who violates the prohibition.<sup>11</sup>

One of the essences of a criminal act is the existence of a fault (*schuld*). In a number of literatures on criminal law learning, 2 (two) forms of mistakes are known, namely mistakes as intentionality (*dolus*) and mistakes as negligence or forgetfulness (*culpa*).

In Dutch, *Dolus* is called *opzet*, which in English is called *intention*, which then in Indonesian means intention or intentionality. In Indonesian criminal law, namely the Criminal Code, we do not find a formulation of what is meant by *opzet*. However, the definition of *opzet* is very important, because it is used as an element of some criminal events in addition to events that have elements of *culpa*.<sup>12</sup>

Negligence or forgetfulness is a form of error. By its nature, negligence is a form of error that has a lower degree than intentionality. But it can also be said that negligence is the opposite of intentionality, because if in intentionality a result that arises is from the will of the perpetrator, then in negligence or forgetfulness, a result is not desired by the perpetrator even though the perpetrator can estimate it beforehand.

According to Simons, *culpa* has 2 (two) elements each, namely "absence of

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<sup>9</sup> Adami Chazawi, *Criminal Law Lesson 1*, (Jakarta: PT. King Grafindo, 2007), 69.

<sup>10</sup> P.A.F. Lamintang, *Fundamentals of Indonesian Criminal Law*, (Bandung: Citra Aditya Bakti, 1997), 185.

<sup>11</sup> Ismu Gunadi and Jonaedi Efendi, *Criminal Law*, (Jakarta: Kencana, 2014), 35.

<sup>12</sup> Teguh Prasetyo, *Criminal Law*, (Jakarta: Raja Grafindo Persada, 2011), 95-96.

caution" and lack of attention to the consequences that arise. Meanwhile, Moeljatno said that forgetfulness is a very *gecomliceerd* structure, which on the one hand leads to mistakes in one's actions outwardly, and on the other hand leads to the person's inner state.<sup>13</sup>

In this sense, in forgetfulness (*culpa*) there is a meaning of error in a broad sense that is not intentional. There is a difference between intentionality and forgetfulness, where in intentionality there is a positive trait, namely the will and consent of the perpetrator to do a prohibited act, while in forgetfulness the positive trait is not found.<sup>14</sup>

The negligence factor in classical criminal law is known as *the principle of actus non facit reum nisi mens sit rea*, which means that an action cannot make a person guilty unless his mind is also guilty. In other words, in a criminal act, evil thoughts or *mens rea* are needed. Without it, a person cannot be punished except for acts classified as *strict liability*.

In the context of traffic law in Indonesia, it is regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law). In the LLAJ Law, it is stated that traffic is the movement of vehicles and people in the road traffic space. So it can be understood that a traffic crime is an act or act or event or violation of the legal rules that regulate traffic. The event or action occurred or was carried out either intentionally or perhaps because there was an element of negligence. From these events or actions, there are legal consequences so they must be accounted for.

One form of legal event in the field of traffic is the occurrence of a traffic accident. An accident that of course will have an impact or legal consequences on drivers or other road users. Article 1 paragraph 24 of the LLAJ Law jo. Article 1 paragraph 3 of the Regulation of the Chief of Police of the Republic of Indonesia Number 15 of 2013 (Perkapolri No. 15 of 2013) concerning Procedures for Handling Traffic Accidents states that a traffic accident is an unexpected and unintentional incident on the road involving vehicles with or without other road users that results in human casualties and/or property losses. Traffic accidents occur due to violations of traffic provisions or rules on the road or actions that are contrary to the provisions of traffic laws and

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<sup>13</sup> Lamintang, *Op.Cit*, 336.

<sup>14</sup> Mahrus Ali, *Basics of Criminal Law*, (Jakarta: Sinar Grafika, 2012), 177.

regulations.

All acts that are contrary to Law No. 22 of 2009 concerning Road Traffic and Transportation are criminal acts, therefore like other legal norms, all forms of violations committed certainly have legal consequences in the form of sanctions that will be given to violators of the law.<sup>15</sup>

Specifically related to traffic regulation violations mentioned in the LLAJ Law, namely:

- a. Violation of *the right of way*.
- b. Violation of vehicle speed limits.
- c. Violation of traffic signs, road markings, signaling devices, etc.
- d. Violations in driving a vehicle, such as driving unnaturally and driving a vehicle by engaging in activities that can interfere or distract from concentration.
- e. Violation of pedestrian and cyclist rights.

All forms of violations mentioned above certainly have criminal sanctions that accompany them. Criminal sanctions of different sizes according to the form of violation committed. The criminal sanction is given, taking into account the aspects of justice, justice, and usefulness for all road users.

In the context of traffic accidents, it is also mentioned in the LLAJ Law which categorizes traffic accidents based on 3 (three) categories based on Article 229, namely light, medium and heavy traffic accidents. Especially in the context of negligence that causes traffic accidents, it is mentioned in Article 310 which reads as follows:

- 1) Every person who drives a motor vehicle that, due to his negligence, causes a traffic accident with damage to vehicles and/or goods as referred to in article 229 paragraph (2), shall be sentenced to imprisonment for a maximum of 6 (six) months and/or a maximum fine of Rp1,000,000.00 (one million rupiah).
- 2) Every person who drives a motor vehicle that, due to his negligence, causes a traffic accident with minor injuries and damage to vehicles and/or goods as referred to in article 229 paragraph (3), shall be sentenced to a maximum of 1 (one) year in prison and/or a maximum fine of Rp2,000,000.00 (two million rupiah).

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<sup>15</sup> Leksmono Suryo Putranto, *Traffic Engineering*, (Jakarta: Index, 2019), 153-168.



- 3) Every person who drives a motor vehicle that, due to his negligence, causes a traffic accident with a serious injury as referred to in article 229 paragraph (4), shall be sentenced to a maximum of 5 (five) years in prison and/or a maximum fine of Rp10,000,000.00 (ten million rupiah).
- 4) 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 imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp12,000,000.00 (twelve million rupiah).

Regarding liability, article 234 paragraph 1 of the LLAJ Law states that "Drivers, owners of motor vehicles, and/or public transportation companies are responsible for losses suffered by passengers and/or owners of goods and/or third parties due to the driver's negligence". In the same article, paragraph 3 letter (b) states that the form of responsibility does not apply if the accident is the fault or behavior of the victim himself. In his explanation, it is stated that what is meant by responsibility is accountability adjusted to the level of error due to negligence.

The police, as one of the law enforcers in Indonesia in enforcing traffic crimes, use a number of approaches, one of which uses a repressive law enforcement approach based on the provisions of the LLAJ Law. However, in today's developments, another approach has emerged, namely a *restorative justice*-based approach.

This is considering that one of the purposes of law is to provide order and peace of the community and build the concept of community legal awareness. Especially if it is true after an investigation by the police that there is indeed a negligence factor in the perpetrator of the crime. Thus, with a *restorative justice approach*, results can be obtained that pay attention to the interests or needs of the parties without overriding the applicable laws and regulations.

Law enforcement itself as a process is essentially the application of discretion that involves making decisions that are not strictly regulated by legal methods. A form of decision-making that has an element of personal assessment. Quoting Roscoe Pound's opinion, Lafavre stated that the essence of discretion is between law and morality (ethics in a narrow sense), therefore, it can be said that law enforcement does not mean

solely the implementation of legislation.<sup>16</sup>

In Indonesia itself, *restorative justice* arrangements are found in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Article 1 paragraph 6 of the law states that restorative justice is the settlement of criminal cases by involving the perpetrator, the victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation.

The concept of *restorative justice* is basically simple, namely the measure of justice is no longer based on appropriate retribution from the victim to the perpetrator (either physically, psychologically or punitively), but the painful act is cured by providing support to the victim and requiring the perpetrator to be responsible with the help of family and society when necessary.<sup>17</sup>

For traffic crimes, the concept of *restorative justice* can be applied based on the discretionary authority of the National Police which is regulated in article 18 paragraph 1 of the National Police Law which states "For the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities can act according to their own judgment".

The discretionary authority of the National Police is an authority that comes from the principle of general police obligation (*plichtmatigheids beginsel*), which is a principle that gives authority to police officials to act or not act according to their own judgment, in the context of the general obligation to maintain, maintain order and ensure public security.<sup>18</sup>

Furthermore, the Regulation of the National Police of the Republic of Indonesia number 8 of 2021 (Perpol no. 8 of 2021) in article 1 paragraph (3) states that restorative justice is the settlement of a criminal act by involving the perpetrator, victim, family of the perpetrator, victim's family, community leaders, religious leaders,

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<sup>16</sup> Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: PT. Raja Grafindo Persada, 2002), 5.

<sup>17</sup> Joel Efraim Yohanis Walintukan, Daniel F. Aling and Roy Ronny Lembong, "The Application of Restorative Justice in the Process of Resolving Traffic Accident Violations Causing Death", *Lex Crimen X*, no. 11 (October 2021): 67.

<sup>18</sup> Joko Rudiantoro, "Police Discretion in Overcoming Anarchic Actions in Society", *IUS II Journal*, no. 6 (December 2014): 490.

traditional leaders or stakeholders to jointly seek a just settlement through peace by emphasizing restoration to the original state.

There are conditions that are determined in the handling of criminal acts based on restorative justice, which include general requirements and special requirements. General conditions apply to the handling of criminal acts based on restorative justice in the implementation of criminal investigation, investigation or investigation functions, while special conditions apply to the handling of criminal acts based on restorative justice in investigation or investigation activities.

General requirements as mentioned above include material requirements and formal requirements. Article 5 of Perpol no. 8 of 2021 regulates these material requirements, including:

1. Does not cause unrest and/or rejection from the community;
2. No impact on social conflicts;
3. It does not have the potential to divide the nation;
4. Not radicalism and separatism;
5. Not a repeat of the Criminal Offense based on a Court Decision; and
6. Not a Crime of Terrorism, a Crime Against State Security, a Crime of Corruption and a Crime against People's Lives.

Furthermore, Article 12 paragraph (4) of the National Police Chief Regulation No. 6 of 2019 concerning Criminal Investigation provides additional material requirements which are limiting requirements, namely:

- a. On the perpetrators:
  - 1) The level of error of the perpetrator is relatively not severe, namely mistakes in the form of intentionality; and
  - 2) The perpetrator is not a recidivist;
- b. in criminal acts in the process:
  - 1) Research; And
  - 2) Investigation, before the SPDP is sent to the Public Prosecutor;

Meanwhile, the formal requirements are mentioned in article 6 of Perpol no. 8 of 2021

1. Formal requirements as intended in Article 4 letter b, including:
  - a. Peace from both sides, except for Drug Crimes; and
  - b. Fulfillment of the rights of victims and responsibilities of perpetrators, except for Drug Crimes.
2. Peace as referred to in paragraph (1) letter a, evidenced by a peace agreement letter and signed by the parties.
3. The fulfillment of the victim's rights and the responsibility of the perpetrator as intended in paragraph (1) b can be in the form of:
  - a. Return goods;

- b. Compensate for losses;
  - c. Replace the costs incurred as a result of the Criminal Act; and/or
  - d. Replace the damage caused by the Criminal Act.
4. The fulfillment of the rights as referred to in paragraph (3), as evidenced by a statement in accordance with the agreement signed by the victim.
  5. The format of the peace agreement letter as intended in paragraph (2), and the statement letter as intended in paragraph (4), are listed in the Attachment which is an integral part of this Police Regulation.

Furthermore, special requirements in handling criminal acts based on restorative justice are additional requirements for information crimes and electronic transactions, drugs, and traffic. Special requirements as additional requirements in traffic crimes as mentioned in article 10 of Perpol no. 8 of 2021 include:

- a. traffic accidents caused by driving a motor vehicle in a dangerous manner and circumstances that result in material losses and/or minor injuries; or
- b. traffic accidents on the road due to negligence that result in human casualties and/or property losses.

### **3. Obstacles in Law Enforcement of Traffic Crimes Due to Driver Negligence**

Every activity or action certainly has obstacles faced. Similarly, law enforcement as an effort to uphold legal norms and rules, of course, there are also obstacles that accompany it. An obstacle that will affect an expected outcome in law enforcement. Obstacles in law enforcement are inseparable from the influencing factors in law enforcement itself.

According to Soerjono Soekanto, in general, a law enforcement is influenced by several factors, including:<sup>19</sup>

1. The legal factor itself, in this context is the law;
2. Law enforcement factors, namely the parties that form or apply the law;
3. Factors of facilities and facilities that support law enforcement;
4. Community factors, namely the environment in which the law applies or is applied, and;
5. Cultural Factors are the result of works, creations and flavors based on karsa.

If reflecting on the theory mentioned above, the obstacles to law enforcement of traffic crimes due to driver negligence are as follows:

#### *1. Legal Factors*

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<sup>19</sup> Muntaha Luthfi, "A Review of Legal Sociology of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage", *Journal of Law* 1, no. 1 (2022): 68-69.

The LLAJ Law has mentioned the concept of regulating criminal acts that originate from traffic accidents in which there is an element of negligence. This means that the LLAJ Law has provided space for the regulation of criminal acts or accidents that contain elements of culpa or negligence.

However, the nature of the regulation of negligence itself is still limited to the nature of punishment in the law. Meanwhile, in the event that there is negligence in a criminal act, the element or factor of negligence must be really considered, that to what extent the negligence itself has an influence in terms of legal sanctions.

The law does not provide an explanation of what form of negligence with sanctions as mentioned. This can be said to be an obstacle in the traffic law enforcement law related to the assessment of negligence. Whether it is pure negligence or not, if there is negligence, whether the negligence is due to the absence of caution or negligence due to a lack of attention to the consequences that arise. So that its implementation is by paying attention to the doctrines that develop in legal science. Moreover, in theory, doctrine is also one of the sources of law.<sup>20</sup>

Of course, the doctrine is adjusted to the facts found in the field related to findings about things that can mitigate punishment such as the existence of an element of lack of caution as contained in the example or it may also be incriminating if a criminal act occurs because there is an element of intentionality. Law enforcement factors play a big role in exploring the implied meaning of the law.

## *2. Law Enforcement Factors*

Law enforcement factors play a big role in exploring the implied meaning of the law. For example, a person who breaks through a red light on a traffic sign resulting in an accident. The task of the police as law enforcement is to find and explore the elements of criminal acts in the incident. Whether breaking through the red light is a form of intentionality or negligence on the part of the driver of the vehicle.

Regarding such conditions, the police must be careful in investigating. If in the case mentioned above, an element of negligence is found, the police in enforcing the law must pay attention to the extent to which the element of negligence occurs.

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<sup>20</sup> Andika Adhyaksa, "Legal Doctrine: A Mere Perspective or Becoming a Relevant Source of Law", *de Jure: Scientific Journal of Legal Sciences* 5, no. 1 (June, 2024): 3.

Whether the negligence is a form of negligence as carelessness or negligence due to neglect.

In this case, the obstacle faced in law enforcement where there is an element of negligence in it is still not optimal for law enforcement to understand the elements in the crime itself, both aggravating elements and mitigating elements. Law enforcement officials mostly only look at the outside of the elements in criminal acts. It is rare for a law enforcer to look in more detail at negligence as an accompanying element in a criminal act.

There are still many law enforcers who only dwell on the problem of how to enforce the law, not looking at the other side of the law. He only sees it from a dogmatic point of view without looking at the other side. Especially when it comes to the issue of negligence. According to Soerjono Soekanto, "law enforcement" lies in harmonizing the relationship of values described in the rules that are firm and embodied and the attitude of action as a series of elaboration of the values of the final stage of experts, to create, maintain and maintain peace in life. Meanwhile, in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations.<sup>21</sup> Therefore, the development of law enforcement human resources is a necessity that must be implemented.

### *3. Facilities and Facilities Factors*

The factors of facilities and facilities here are very rarely involved as obstacles in law enforcement because the focus is on the element of negligence, which is directly involved in the legal means and the means of law enforcement. Regarding the factor of facilities in the form of equipment to finance, it is relatively not intersecting with the element of negligence in a criminal act. However, to strengthen law enforcement, there is an option by strengthening the latest technological aspects related to traffic management in Indonesia so that law enforcement will more easily determine the extent of negligence in a traffic accident.

### *4. Community Factors*

Indonesian society is very pluralistic with various backgrounds, both economic

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<sup>21</sup> Wicipto Setiadi, "Law Enforcement: Its Contribution to Legal Education in the Context of Human Resource Development", *National Law Magazine* 2, (2018): 5.

and educational.<sup>22</sup> That is the obstacle that in people who have not been able to fully understand what the law itself is, the Indonesian people are still far from caring about the rule of law. Many traffic violations due to apathy towards the regulations. In fact, a concern for rules that if instilled will develop into a habit, and of course a habit that is firmly embedded can become a culture that is widely embedded among the community.

#### *5. Cultural Factors*

The public's indifference to a legal rule is a culture that occurs in Indonesian society, although not all. However, if you pay attention, most of the Indonesian people are still cultured not obeying the rule of law which may not understand why the law was made even though they are actually aware that breaking through the red light is a violation, but it has become a culture so it is still done. In another example, the public may also be aware that if a motorcycle accident occurs without using a helmet, it will have a greater risk, but not wearing a helmet is a culture, and culture still cannot touch the legal awareness of the community.

### **C. CONCLUSION**

Based on the discussion mentioned above, it can be concluded that one form of law enforcement against traffic crimes that contains elements of *culpa* or negligence is the *restorative justice* approach. An approach that overrides retaliation in criminal law and is more about efforts to recover losses involving perpetrators, victims, families, and the community by finding solutions to solve problems together by using awareness and realization as a foundation to improve community life. The concept of *Restorative Justice* for law enforcement of traffic crimes is based on the principle of the general obligation of the National Police in the form of discretion regulated in the National Police Law, which is then described in the National Police Regulation No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice.

The main obstacle in law enforcement mentioned above is the lack of maximum law enforcement human resources who on average are only guided by dogmatics in understanding the law, not reaching the goal of the law, especially against the element of *culpa* against criminal acts. Another obstacle is the legal factor where the LLAJ Law

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<sup>22</sup> Dadang Sudiadi, "Towards a Harmonious Life in a Pluralistic Society: A View on the Importance of a Multicultural Approach in Education in Indonesia", *Indonesian Journal of Criminology* 5, no. 1 (February 2009): 33-42.

is still based on punishment even though it knows the term negligence. The extent of the meaning of the negligence has not even been described. Other minor obstacles are facility factors, community factors and cultural factors.

Therefore, in the future, there must be an increase in the qualifications of law enforcement through further study or training on law enforcement, especially in understanding the rules of law enforcement which are not limited to legal dogmatics but also an understanding of legal objectives and legal concepts in legal regulations. A comprehensive understanding of the concept of law and its enforcement will have an impact on the law enforcement process and of course on the legal order of the community. In addition, the involvement of all groups of elements and society will increase the legal awareness of the community and thus the goal of order and peace in society will be achieved.

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