

## Implementation of Traffic Accident Insurance for Violations of Traffic Regulations in the National Social Security System

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**Abstract.** *Analysis of the process of implementing traffic accident insurance by PT Jasa Raharja for violations of traffic regulations. The existence of PT Jasa Raharja is really needed by the public to get road traffic accident insurance protection. This research aims to study and analyze the implementation of traffic accident insurance for violations of traffic regulations. As well as reviewing and analyzing obstacles in implementing traffic accident insurance for violators of traffic regulations. The approach method used in this research is sociological juridical. The specifications of this research are analytical descriptive. The data sources used are primary data and secondary data. Traffic violations committed by the public will cause traffic accidents, because in principle traffic accidents must begin with a traffic violation. The implementation of providing compensation to drivers who do not have a driving license or who commit traffic violations has currently been provided with ex-gratia compensation for two or more vehicles. The provision of ex gratia compensation for two or more vehicles is based on the policy of the head of the representative which aims to provide guaranteed accident protection for the public as road users. PT Jasa Raharja Board of Directors Decision Number KEP/132/2023. The essence of this policy is to limit ex-gratia payments more selectively. The Board of Directors' decision Number KEP/132/2023 is contrary to Article 14 of Government Regulation Number 18 of 1965. Article 14 of Government Regulation Number 18 of 1965 requires changes to the government regulation.*

**Keywords:** Accident; Insurance; Traffic; Violations.

### 1. Introduction

Every citizen must receive protection from the State. The government has a very important role in providing social security to traffic accident victims. Traffic accidents can happen to anyone, especially from the lower middle class, so the presence of the State is very necessary in providing social security to those who

experience traffic accidents.<sup>1</sup>This is in accordance with Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "Every person has the right to social security which enables his/her full development as a useful human being".<sup>2</sup> Then, according to Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is stated that "the State develops a social security system for all people and empowers weak and incapable people in accordance with human dignity", thus the government is obliged to provide social security to society.

Traffic in Indonesia is regulated in statutory regulations, namely Law Number 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order and welfare in society which need to be determined regarding prohibited and required actions.<sup>3</sup> The increasing number of traffic accident victims which result in injuries or deaths, requires presence in efforts to prevent traffic accidents from occurring.

Not only in prevention efforts, but the presence of the State is also needed after an accident occurs by building a social security system. The state's responsibility in developing a national security system is basically intended for weak and underprivileged communities, so in implementing social security it is not only about ensuring the availability of good facilities, but also ensuring that people's rights can be fulfilled properly. In this case, the form of social security provided by the State to traffic accident victims is social insurance.<sup>4</sup>

Social insurance is mandatory because it is carried out based on the orders of the law. Social insurance aims to provide social security to the community. In the beginning, social security was social in nature (welfare program), namely providing assistance in the form of financial, medical and other services for people who cannot afford it.<sup>5</sup>The embodiment of social security from the government is in 1964, the government issued Law Number 34 of 1964 concerning Road Traffic Accident Funds,

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<sup>1</sup>Cahya Primarta. "Analisis Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian Terhadap Jaminan Sosial Korban Kecelakaan Lalu Lintas di PT. Jasa Raharja (Persero) Cabang Jawa Tengah". *Jurnal Daulat Hukum* Vol 1, No 1 (2018), p. 213, url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/2635> accessed February 12, 2024.

<sup>2</sup>Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia

<sup>3</sup>Muhammad Dani Hamzah, "Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang", *Jurnal Daulat Hukum* Vol 1, No 1 (2018), p. 44, <https://jurnal.unissula.ac.id/index.php/RH/article/view/2563> accessed February 12, 2024

<sup>4</sup> Maryanto dan Ahmad Suhasan. "Politics of Law of Social Security of Passenger Accidents Construction of State Responsibility". *Law Development Journal*, Volume 3, Issue 1 (2021), p. 31 <https://jurnal.unissula.ac.id/index.php/ldj/article/view/14235> accessed February 12, 2024

<sup>5</sup> Sentanoe Kartonegoro. (1989). *Jaminan Sosial Perencanaan, Pembiayaan, & Peranannya*. Mutiara Sumber Wijaya, Jakarta, p. 23

which aimed to provide social security for people who were victims of road traffic accidents. Then, to implement this law, the government issued Government Regulation Number 18 of 1965 concerning Provisions for Implementing Road Traffic Accident Funds. PT Jasa Raharja Insurance is a company appointed by the government to carry out road traffic accident insurance as mandated by Law Number 34 of 1964 concerning Road Traffic Accident Funds.

The implementation of traffic accident victim insurance is basically aimed at every person who experiences a traffic accident in the form of death, injury or permanent disability and is entitled to receive accident compensation funds or compensation for losses.<sup>6</sup> However, the basic protection provided under Law No. 34 of 1964 is third party liability or the legal responsibility of a third party. Article 4 of Law Number 34 of 1964 reads: "Every person who is the victim of death or permanent disability as a result of an accident caused by the road traffic transportation equipment mentioned in article 1, the Fund will provide losses to him or his heirs in the amount determined based on Government regulations".

Thus, single traffic accident cases and accident cases where the victim is the cause of the traffic accident are accidents that cannot be guaranteed by PT Jasa Raharja based on Law Number 34 of 1964. For payment of accident insurance for accident victims who are the cause In the event of a traffic accident, PT Jasa Raharja pays ex gratia for two or more vehicles. This ex gratia payment is a policy of the Directors of PT Jasa Raharja for cases outside the scope of PT Jasa Raharja's guarantee. The ex gratia payment policy carried out by PT Jasa Raharja is an effort to meet the needs of the community which are not accommodated in the law, so a new law is needed to meet the community's need for basic traffic accident protection in the form of ex gratia.

In the results of research conducted by Maryanto and Ahmad Suasana, PT Jasa Raharja is the only business entity that provides social security insurance for traffic accidents.<sup>7</sup> Meanwhile, in the national social security system, not only PT Jasa Raharja provides social security insurance for traffic accidents, but there is still a Social Security Administration Agency as a second guarantor or secondary payer for traffic accident victims.

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<sup>6</sup>Merta Hapsari & Suteki, "Rekonstruksi Program Perlindungan Dasar Melalui Program Pertanggungjawaban Wajib Kecelakaan Penumpang & Lalu Lintas", *Jurnal Pembangunan Hukum Indonesia* Vol. 1 No. 1, (2019), p. 66 [urls:https://ejournal2.undip.ac.id/index.php/jphi/article/view/4279](https://ejournal2.undip.ac.id/index.php/jphi/article/view/4279) accessed February 12, 2024

<sup>7</sup> Maryanto & Ahmad Shasasan, Op. Cit., p. 36

This research aims to determine the implementation of accident insurance for traffic rule violators based on the national guarantee system that applies in Indonesia and to see the obstacles in implementing accident insurance for traffic rule violators. So that Indonesian people can know their rights and receive legal protection from the State when they experience a traffic accident.

## 2. Research Methods

Writing in research uses a sociological juridical approach to view law in a real or empirical sense and examine how law applies in society.<sup>8</sup>The writing in this research is descriptive analytical, looking at the implementation of Law Number 34 of 1964. The data used for this research is from two data sources, namely primary and secondary data obtained from interviews and then supplemented with secondary data originating from primary, secondary and tertiary legal materials. This research uses a qualitative analysis method, with this method it is hoped that clear data will be obtained regarding the main problem, then The analysis process is carried out simultaneously with the data collection process.

## 3. Results and Discussion

### 3.1. Implementation of Traffic Accident Insurance for Violations of Traffic Regulations in the National Guarantee System

In a developing country like Indonesia, the transportation sector greatly influences the rate of development. Transportation of various types and amounts supports economic, social and political aspects. The recent rise in various accidents involving land transportation has reached an alarming point. Facts prove that traffic accidents are one of the biggest causes of death in Indonesia.<sup>9</sup>Traffic accidents according to the provisions of Article 1 point 24 of Law Number 22 of 2009 concerning Road Traffic and Transportation as follows "A traffic accident is an unexpected and unintentional incident on the road involving vehicles with or without the use of other roads resulting in casualties human and/or property loss".<sup>10</sup>

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<sup>8</sup>Soerjono Soekanto & Sri Mamudji. (2009). *Penelitian Hukum Normatif Suatu Tinjau Singkat*. Cetakan ke-11, Raja Grafindo Persada, Jakarta. p. 13-14

<sup>9</sup>Dendy Wicaksono, Rizky Akbar Fathurochman, & Bambang Riyanto. "Analisis Kecelakaan Lalu Lintas (Studi Kasus - Jalan Raya Ungaran - Bawen)". *Jurnal Karya Teknik Sipil* Vol. 3, No 2 (2014), p. 347, url :<https://ejournal3.undip.ac.id/index.php/jkts/article/download/5102/4908> accessed February 17, 2024

<sup>10</sup>General Provisions Explanation of Law Number 22 of 2009 concerning Road Traffic and Transportation

Several countries identify three main causes of traffic accidents, namely human factors, vehicle factors and road or environmental factors. These three factors exist in Indonesia. Traffic accidents are closely related to the condition of the road traveled. Roads that are good and equipped with complete supporting facilities have a lower accident rate compared to roads that have less supporting facilities.<sup>11</sup> Security and safety when driving are the main things that motor vehicle users must pay attention to. Motorized vehicle users often ignore the elements of safety riding. Motor vehicle users pay attention to safety riding because the majority of traffic accidents are caused by motor vehicle user negligence.

Not having a driving license is also one of the causes of many traffic accidents on the highway. The majority of motorcyclists do not have a driving license because they are not old enough or are under 17 years of age.<sup>12</sup>

When driving on the highway, people cannot be separated from the risk of traffic accidents. One of the efforts made by humans when facing a risk is to carry out risk management. Risk management is a process of identifying, measuring, developing, selecting and managing options to deal with these risks.<sup>13</sup> One form of risk management is to transfer the risk to an insurance company, if a disaster occurs which causes material loss, it can be borne by the insurance company, either some or all of the losses suffered. Insurance or coverage arises because of the needs of basic human nature which always hopes for health and prosperity, but Allah SWT determines everything.

According to Article 246 of the Criminal Code, insurance or coverage is an agreement in which the insurer binds itself to the insured by obtaining a premium, to provide him with compensation for loss, damage or not getting the expected profit which may be suffered due to an uncertain event. One of the principles in the agreement is the Pacta Sun Servanda principle. This principle is the binding principle of an agreement, which means that the parties who make the agreement are bound by the agreement they have made. In other words, an agreement that is made

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<sup>11</sup>Utami Sylvia Lestari & Renty Ika Anjarsari. "Analisis Kecelakaan Lalu Lintas & Penanganan Daerah Rawan Kecelakaan Jalan Ahmad Yani (Ruas Km 17 – Km 36) Kota Banjarbaru". *Jurnal Teknologi Berkelanjutan (Sustainable Technology Journal)* Vol. 9, No. 2 (2020), p. 111, url:<http://jtb.ulm.ac.id/index.php/JTB/article/view/176/139> accessed February 17, 2024

<sup>12</sup>Sarpan & Sri Kusriyah, "Requirements Effectiveness to Obtain License C (SIM) in Pressing of Traffic Accidents", *Law Development Journal* Vol 2, Issue 3, (2020), p. 291, url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/11837> accessed February 18, 2024

<sup>13</sup> Isra Misra, Sofyan Hakim, Agus Pramana, (2020), *Risk Management, Sharia Economic Business Approach*, Yogyakarta, K-Media Publisher, p. 3

legally applies as if the law applies to the parties who make it.<sup>14</sup>

Road traffic accident insurance is mandatory for all motor vehicle owners as a form of legal responsibility for motor vehicle owners if a traffic accident occurs. Road traffic accident insurance aims to provide basic protection to everyone who is a victim of a traffic accident outside the means of transportation that causes a traffic accident. Motor vehicle owners pay mandatory contribution premiums every year along with PKB (Motor Vehicle Tax) payments at the Joint Office of the One-Stop Single Administration System (SAMSAT). Basically, mandatory insurance has the aim of providing protection to third parties for the use of motor vehicles from the owner/driver of the motor vehicle, the premium payment of which is borne by the owner/driver of the motor vehicle.

Transportation provides benefits to society because traffic transportation can facilitate the movement of people or goods from one place to another. Every community can move quickly and can do a lot of work because they are helped by transportation.<sup>15</sup> Basically, every person who uses transportation means does not want traffic accidents to occur. Traffic violations committed by the public will cause traffic accidents, because in principle traffic accidents must begin with a traffic violation.

Road traffic and transportation also pose problems for the government, such as congestion due to road growth not being in line with vehicle growth, public non-compliance in paying motor vehicle taxes, violations of traffic regulations and even traffic accidents. It is the duty of stakeholders to think about this in order to reduce the number of traffic accidents.<sup>16</sup>

PT Jasa Raharja as the manager of road traffic accident insurance, has the right to

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<sup>14</sup>Syaeful Bahri & Jawade Hafidz, "Penerapan Asas Pacta Sunt Servanda Pada Testament Yang Dibuak Di Hadapan Notaris Dalam Perspektif Keadilan", *Jurnal Akta* Vol. 4, No. 2 (2017) Published Master Of Notarial Laws Faculty of Law Unissula, p. 154, <https://jurnal.unissula.ac.id/index.php/akta/article/view/1777/1319> accessed February 19, 2024

<sup>15</sup>Bhakti Satriya Perdana Sugiyanto. "Peran Satlantas Polres Rembang Dalam Menanggulangi Tingginya Kecelakaan Akibat Parkir Liar (Studi Kasus di Kabupaten Rembang)". *Jurnal Daulat Hukum* Vol 1, No 1 (2018), pp. 138, url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/2627/1976> accessed February 18, 2024

<sup>16</sup>Pramana Putra, "Traffic accident analysis is an evidence process in Traffic Accidents based on Act No. 22 of 2009", *Journal of Legal Sovereignty* Vol 1, No 4 (2018), p. 954, url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/4138/2888> accessed February 18, 2024

receive mandatory contributions and donations from road traffic transport owners/entrepreneurs and public transport passengers and distribute them back in the form of road traffic accident insurance compensation to traffic accident victims. The implementation of providing compensation to traffic accident victims is carried out based on Law Number 34 of 1964 concerning Road Traffic Accident Funds and Government Regulation Number 18 of 1965 concerning Provisions for Implementing Road Traffic Accident Funds.

Mandatory contributions are used to replace the term premium in general insurance. In line with the function of Road Traffic Accident Insurance, which is legal liability insurance for third parties, which provides guaranteed protection to other parties, the term donation is used. This means that the owner of a motor vehicle pays a certain amount of money as a contribution to another party who has an accident due to the negligence or fault of the owner of the vehicle. The motor vehicle owner does not enjoy the benefits of the money paid.<sup>17</sup>

The scope of accident insurance in Indonesia is specifically for traffic accidents involving motorized vehicles, namely collisions between motorized vehicles or if the cause of the accident is a motorized vehicle, as stated in Article 4 paragraph (1) of Law no. 34 of 1964. Based on these provisions, the government provides basic protection to people who become victims outside of vehicles that cause accidents.

This is reaffirmed in Article 10 paragraph (1) of Government Regulation Number 18 of 1965 concerning Provisions for the Implementation of Road Traffic Accident Funds, namely everyone who is outside the road traffic transportation equipment that causes accidents, who become victims as a result of accidents from using the road traffic transportation equipment. Based on these provisions, it can be interpreted that every person, in this case the driver or passenger of a motorized or non-motorized vehicle as well as a pedestrian, as long as the victim concerned is outside the road traffic means of transportation causing an accident, the victim is within the scope of the insurance coverage.

In the national social security system, not only PT Jasa Raharja provides social security insurance for traffic accidents, but there is still a Social Security Administration Agency as a second guarantor or secondary payer for traffic accident victims. Single traffic accident cases and accident cases where the victim is the cause of the traffic accident are accidents that cannot be guaranteed by PT Jasa Raharja, so the cost of treating accident victims can be guaranteed by the Social Security

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<sup>17</sup> Kun Wahyu Wardana. (2009). *Hukum Asuransi Proteksi Kecelakaan Asuransi*. Mandar Maju, Bandung, p. 13

Administration. This is in line with the mandate of Law Number 40 of 2004 concerning the National Guarantee System.

Jan Michiel Otto, provides limits to legal certainty regarding the definition of legal certainty, namely the availability of regulations that are clear, consistent and easy to obtain (accessible). Thus, single traffic accident cases and accident cases where the victim is the cause of the traffic accident are accidents that cannot be guaranteed by PT Jasa Raharja based on Law Number 34 of 1964. Another opinion regarding legal certainty was expressed by Roscoe Pound, Legal certainty means general rules to make individuals understand what actions they can and cannot do.<sup>18</sup>

The general public actually knows these regulations, but the public's legal awareness of obeying traffic regulations is still low. Drivers often do not pay attention to the safety of themselves or others, then the large number of violations when driving on the highway and the lack of public legal compliance and awareness regarding traffic, can result in traffic accidents resulting in fatalities.<sup>19</sup>The public has an obligation to obey traffic regulations, so that when a traffic accident occurs, they are not in a position to cause a traffic accident. Because in this case, when a traffic accident occurs, it definitely begins with a violation of traffic regulations. When an accident occurs, people are not in a position to be the cause of a traffic accident, so they get basic protection from Jasa Raharja insurance.

*Ex gratia* In insurance terms, it can be interpreted as discretionary claim payments for claims that actually do not meet the coverage criteria. Payment of this claim is solely based on consideration of non-technical factors, including business considerations or good relationships. Generally, *ex gratia* payments are not made in full and do not take the reinsurance portion.<sup>20</sup>In implementing Laws Number 33 and 34 of 1964, *ex gratia* provisions can also apply to victims who are not insured. With humanitarian considerations, they can be given compensation.

*Ex-gratia* is a justifiable discretion because it is in line with the initial aim of the law to provide basic protection to traffic accident victims. However, this can only be

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<sup>18</sup>Peter Mahmud Marzuki. (2018). *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, p. 137

<sup>19</sup>Hengki Irawan, Sri Endah Wahyuningsih & Jawade Hafiz, "Legal Protection For Victims Of Traffic Violations That Lead To Death (Case Study On Police Traffic of Rembang)", Volume 2 Issue 4 (2019), p. 486, url:<https://jurnal.unissula.ac.id/index.php/RH/article/view/8349/3869> accessed February 20, 2024

<sup>20</sup>Lendrawati & Kelvin Junnatan, "Analisa Yuridis Klaim Asuransi Jiwa Secara Ex Gratia Berdasarkan Hukum Asuransi Indonesia", *Journal of Judicial Review* Vol XIX, No 2 (2017), p. 94, url:<https://journal.uib.ac.id/index.php/jjr/article/download/292/286/> accessed February 18, 2024



used as a policy, and is not part of the scope of accident insurance as regulated in statutory regulations. Ex-gratia arises as an effort to meet needs in society that have not been accommodated in law, so a new law (*ius constituendum*) is needed to accommodate all the needs of society.<sup>21</sup>

According to the explanation from Ganis Akbar as the person in charge of the service sector of PT Jasa Raharja, Bukittinggi Representative, ex gratia compensation for two or more vehicles is given to victims of traffic accidents involving two or more motorized vehicles based on the Board of Directors' policy as written in Board of Directors Decree Number Skep/62/VII/2001 Dated 26 July 2001 Concerning Settlement of Compensation for Victims of Road Traffic Accidents Due to Collisions of 2 (Two) or More Vehicles. Then what cannot be given compensation by PT. Jasa Raharja is a single accident victim because in a single accident there are no parties who hit or are hit, except for public motorized vehicles.<sup>22</sup>

In its implementation, the ex gratia policy for two/more vehicles is delegated to Branch Heads and Heads of Representatives of PT Jasa Raharja throughout Indonesia with conditions regulated by the company. This policy is to bridge the legal vacuum that occurs between statutory regulations and conditions existing in society. This policy is a manifestation of the need for basic protection for all traffic accident victims, including accident victims who violate traffic regulations.

The reasons behind the provision of traffic accident compensation funds by PT. Raharja's services to traffic accident victims are outside the provisions of Article 10 paragraph (1) of Government Regulation Number 18 of 1965. Apart from humanitarian factors, the provision of ex gratia compensation is also based on economic factors, propriety and encouragement from the public and government, because people who own motorized vehicles have pay mandatory contributions at the same time as paying motor vehicle tax on STNK. So parties outside the provisions of Article 10 paragraph (1) receive compensation funds from mandatory donations paid by third party victims.<sup>23</sup>

Providing ex gratia assistance to victims of traffic accidents can be linked to one of the contracts in sharia insurance, the contract referred to in this case is the *tabarru'* contract. The *tabarru'* contract does not contain any savings or non-savings elements. Because the purpose of the *tabarru'* contract is purely to help. *Tabarru'*

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<sup>21</sup>Merta Hapsari and Sudek, Op. Cit., p. 74.

<sup>22</sup>Interview with Ganis, Person in Charge of the service sector of PT Jasa Raharja Bukittinggi Representative, on February 19 2024

<sup>23</sup>Interview with Buntaran, Head of PT Jasa Raharja Bukittinggi Representative, on February 19 2024

funds are funds that are given only to obtain rewards from the pleasure of Allah SWT.<sup>24</sup>

Regarding the *tabarru* contract in terms of giving something for grants, gifts, endowments, *zakat*, *infaq* and *shadaqah*, there is no debate among sectarian scholars about its impermissibility, what is needed in Indonesia is public awareness to do so. The contract that is implemented in a contract that occurs within the Islamic/shariah economic corridor, of course has a basic foundation in the form of verses and hadith and has been stipulated by the *ulama* through their fatwa.<sup>25</sup>

Any funds that have been handed over by the community to the management of PT Jasa Raharja at the same time as motor vehicle tax payments are made every year are purely for the purpose of helping without any hope of getting anything in return for what has been given. The obligation to help each other is also written in the word of Allah SWT which reads:

﴿...وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ...﴾

Meaning: Cooperate with one another in goodness and righteousness, and do not cooperate in sin and transgression. And be mindful of Allah. Surely Allah is severe in punishment. (QS. *Al-Maidah* verse 2)

The meaning of the *tabarru'* agreement is in line with the basis for the formation of Law Number 34 of 1964 and Law Number 40 of 2004. In the general explanation it is stated that the proceeds from the collection of funds will be used for the protection of the people at large, namely the victims of road traffic accidents. Because basically, every citizen must receive protection against losses suffered as a result of the risks of road traffic accidents.

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<sup>24</sup>Mariya Ulpah, "Implementasi Akad Tabarru Pada Asuransi Syariah Perspektif Fatwa Dewan Syariah Nasional", *Jurnal Syarie*, Vol. 4, No. 2 (2021), p. 138, url:<https://stai-binamadani.e-journal.id/Syarie/article/view/273/223> accessed February 20, 2024

<sup>25</sup>Haris Maiza Putra, *Konsep Akad Tabarru dalam Bentuk Menjaminkan Diri & Memberikan Sesuatu*, *Jurnal Hukum Ekonomi Syariah* Vol. 5, No.1 (2022), p. 39-40, url:<https://jurnalnasional.ump.ac.id/index.php/JHES/article/view/12141/4880> accessed February 21, 2024

### 3.2. Obstacles in Implementing Traffic Accident Insurance for Violations of Traffic Regulations in the National Guarantee System

On October 2 2023, PT Jasa Raharja issued a policy in the form of, Directors' Decision Number KEP/132/2023 concerning Amendment to Directors' Decision Number Skep/62/VII/2001 Dated 26 July 2001 Concerning Settlement of Compensation for Victims of Road Traffic Accidents Due to Collisions of 2 (Two) or More Vehicles. The essence of this policy is to limit ex gratia traffic accident insurance payments to causes of traffic accidents that violate traffic regulations more selectively. This change has an impact on all parties, starting from internally at PT Jasa Raharja, the police, especially the victims of traffic accidents. Previously, traffic accident compensation could be given to all traffic accident victims except for single accidents, but starting October 4 2023, compensation cannot be given to all traffic accident victims.<sup>26</sup>In its implementation, this policy change drew criticism from the public because prior to the implementation of this policy there was no socialization to the public.

Then on November 13 2023, the policy of limiting compensation payments was canceled by PT Jasa Raharja through Directors' Decision Number KEP/164/2023 Concerning Postponement of Limitations on Settlement of Compensation for Victims of Road Traffic Accidents Due to Collisions of 2 (Two) or More Vehicles. The dynamics of this policy change are very detrimental to people who are victims of traffic accidents, especially victims of traffic accidents that occurred from 4 October 2023 to 12 November 2023. As an illustration, the following is the number of victims affected by the implementation of the policy of limiting ex gratia payments to two or more vehicles at PT Jasa Raharja Bukittinggi Representative:

**Table 1. Data on the number of victims who cannot be given ex gratia insurance for two or more vehicles for the period October to November 2023**

| Type of Violation   | Number of Death Victims | Number of Injured Victims |
|---|-------------------------|---------------------------|
| Against the flow of traffic   |                         |                           |
| Do not have a valid driver's license  | 2 persons               | 8 people                  |
| Driving a vehicle with a modified form and/or function that does not comply with the provisions |                         | 1 person                  |

<sup>26</sup>Interview with Buntaran, Head of PT Jasa Raharja Bukittinggi Representative, on January 19 2024.

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Break through the barrier at a railroad crossing

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Carrying out actions that result in disruption of road function due to content

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Driving a motorized vehicle that is not registered or not equipped with an STCKB

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*Source: Processed Data Recapitulation of Cases Not Given Ex Gratia 2 Vehicles (Post Implementation of Kepdir Number KEP/132/2023 belonging to PT Jasa Raharja Bukittinggi Representative), 2023.*

From the data in the table above, the results show that there were 11 (eleven) people who died or were injured who did not get traffic accident insurance during the implementation of KEP/132/2023, which regulates payment restrictions. *ex gratia* two or more vehicles. This data is only a small picture of the number of people who do not get traffic accident insurance. If you look at it nationally, the number of victims who do not get traffic accident insurance is very large. Of course, this is very detrimental to people who are victims of traffic accidents, where before this policy was implemented they could get traffic accident insurance.

According to Apeldoorn, legal certainty has two aspects, first regarding the question of whether the law can be formed (*bepaalbaarheid*) in concrete matters. This means that parties seeking justice want to know the law in specific terms before starting a case. Second, legal certainty means legal security. This means protection for the parties against the judge's arbitrariness. The government is not permitted to issue implementing regulations that are not regulated by law or conflict with law.<sup>27</sup>

The dynamics of changes in PT Jasa Raharja's policy regarding *ex gratia* payments quickly, if examined using the theory of legal certainty according to Apeldoorn, is that this policy does not provide protection for traffic accident victims and is contrary to Article 14 of Government Regulation Number 18 of 1965 concerning Provisions for Fund Implementation Road Traffic Accidents.

The policy of limiting *ex gratia* payments to two vehicles for violators of traffic regulations who cause traffic accidents should not be implemented because it is contrary to higher laws and regulations. PT Jasa Raharja is not allowed to refuse claims related to violations of traffic regulations, however, in this Government

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<sup>27</sup>Peter Mahmud Marzuki, Op. Cit., p. 138

Regulation PT Jasa Raharja is given the right to collect back from the owner/entrepreneur for claims that have been paid to traffic accident victims.

Provisions of Article 14 Government Regulation Number 18 of 1965 If applied to replace a number of company fund payments, in this case Jasa Raharja has problems related to the limited liability of motor vehicle owners, causing injustice when the position of the vehicle owner is not in a condition to control or use the vehicle.. In this case, the accident occurs without involving the vehicle owner because the vehicle he owns is under the control of another party, whether it is lent, rented, sold but the transfer of name duty (BBN) process has not yet been carried out, or under certain conditions it is owned by a legal entity, company or agency. government.<sup>28</sup>

This causes injustice to motor vehicle owners or entrepreneurs whose vehicle objects are not under their control. Legal protection includes fulfilling a sense of justice, certainty and benefit of the law for the entire community which is manifested in national policies. The Indonesian state is a country based on law or is called a legal state, according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Law is a set of rules that philosophically provide protection for society.<sup>29</sup>

In the context of the legal subject contained in Article 14 Government Regulation Number 18 of 1965 in the phrase "Motorized vehicle owners/entrepreneurs are obliged to reimburse the Company for the amount of funds paid by the Company to victims/heirs, in the event of an accident" is an application of Law Number 34 of 1964 which is also known as Limited Third Party Liability Insurance or limited third party liability insurance.

It can be interpreted that the provisions of Article 14 P Government Regulation Number 18 of 1965 is a form of responsibility for the owner or operator of a motorized vehicle who has caused an accident, who can be held accountable by paying the amount of compensation that the insurer has paid to the victim of a traffic accident, so that the insurer is in a position to obtain benefits for its interests, all the rights and compensation of other parties or known as the Right of Regression. Head of Representative PT. Jasa Raharja Bukittinggi explained that the vehicle owner who was asked for regress rights by PT. Jasa Raharja is the owner of the vehicle

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<sup>28</sup>Rivan Achmad Purwantono, (2023), *Rekonstruksi Regulasi Pertanggungjawaban Hukum Pemilik Kendaraan Bermotor Pada Kecelakaan Lalu Lintas Yang Berkeadilan*, Disertasi, Fakultas Hukum Unissula, p. 219

<sup>29</sup>Denny Suwondo, "The Legal Protection and Dispute Resolution in Peer to Peer Lending-Based Financial Technology Aspect", *Jurnal Pembaharuan Hukum* Vol. 10, No. 2, (2023), p. 342  
urls:<https://jurnal.unissula.ac.id/index.php/PH/article/view/33696/pdf> accessed February 22, 2024

according to the name on the STNK and BPKB after PT. Jasa Raharja pays accident insurance claims to accident victims.<sup>30</sup>

Based on the research results, it shows that the company, in this case Jasa Raharja, has issued technical regulations related to the implementation and enforcement of Article 14 Regulation Government Number 18 of 1965. From 1996 until now in 2024, Jasa Raharja cannot carry out the substantive content in Article 14 of the Regulation Government Number 18 of 1965 related to the principle of subrogation and the right of regress which is the material content of the article.

This happens because Article 14 Government Number 18 of 1965 as a form of responsibility for motor vehicle owners/entrepreneurs, they do not separate individual and collective responsibility for the occurrence of a traffic violation which causes people to be injured or even die, because traffic violations either have physical consequences or violations of the obligation to comply with traffic regulations and do not differentiate between them between motor vehicle owners/entrepreneurs and motor vehicle drivers as differentiated in Law Number 22 of 2009 concerning Road Transport Traffic.

Article 14 Government Regulation Number 18 of 1965, requires changes to these government regulations. This provision emphasizes the difference in responsibility between the vehicle owner and the driver of the vehicle involved in an accident. Then PT Jasa Raharja should make a proposal to the Minister of Finance to make changes again to the Regulation of the Minister of Finance, it is necessary to emphasize that there is an institution which is the implementer of the Regression Right, namely Jasa Raharja with the proposal. Implementation of the provision of compensation funds for traffic accidents and road transport equipment includes the implementation of the regress right.

#### **4. Conclusion**

The provision of compensation by PT. Raharja's services for drivers who violate traffic regulations as a cause related to Law Number 34 of 1964 concerning Compulsory Road Traffic Accident Insurance Funds cannot be paid. The implementation of providing compensation to drivers who commit traffic violations has been carried out in the form of ex gratia compensation for two or more vehicles. The Board of Directors' decision Number KEP/132/2023 is contrary to Article 14 of Government Regulation Number 18 of 1965. Vehicle owners based on Article 14 of Government Regulation Number 18 of 1965 have an obligation to replace the

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<sup>30</sup>Interview with Buntaran, Head of PT Jasa Raharja Bukittinggi Representative on January 23 2024

compensation provided by PT. Raharja's services to victims/heirs of their vehicle if the vehicle they own is the cause of a traffic accident. PT Jasa Raharja cannot implement Article 14 of Government Regulation Number 18 of 1965 because the limited liability of motor vehicle owners creates injustice when the position of the vehicle owner is not in a condition to control or use the vehicle. In this case, the accident occurs without involving the vehicle owner because the vehicle he owns is under the control of another party, whether it is loaned, rented, sold but the Transfer of Name Duty (BBN) process has not been carried out, or under certain conditions it is owned by a legal entity, company or agency. Regarding Article 14 of Government Regulation Number 18 of 1965, changes are needed to this government regulation. This provision emphasizes the difference in responsibility between the vehicle owner and the driver of the vehicle involved in an accident. Then PT Jasa Raharja should make a proposal to the Minister of Finance to make changes again to the Regulation of the Minister of Finance, it is necessary to emphasize that there is an institution which is the implementer of the Regression Right, namely Jasa Raharja with the proposal. Implementation of the provision of compensation funds for traffic accidents and road transport equipment includes the implementation of the regress right.

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