

Criminal Aspects In The Culpa Case Causing The Victims' Death In The Scope Of Traffic

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Abstract

Destination in writing this is to examine and analyze the substance of the criminal aspects of traffic law products in regulating acts of negligence (culpa) which caused the victim's death. In this writing, the writer uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it was concluded that the enactment of Law Number 22 of 2009 concerning Road Traffic and Transportation made Article 359 of the Criminal Code no longer used in the application of sanctions for traffic negligence which caused the loss of other people's lives. This is in accordance with the use of the principle, namely the principle of Lex Specialis Derogat Legi Generalis which means that the principle of legal interpretation states that specific laws override general laws. Law Number 22 of 2009 concerning Road Traffic and Transportation contains high criminal provisions. The article relating to traffic negligence that causes the loss of other people's lives is Article 310 paragraph 4, namely "in the case of an accident as referred to in paragraph 3 which results in the death of another person shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 12,000,000.00 (twelve million rupiahs)".

Keywords: Culpa, Death Victim, Traffic.

1. Introduction

Indonesia is a state based on law, this statement is contained in the Explanation of the 1945 Constitution of the Republic of Indonesia which states that "The State of Indonesia is based on law (rechtstaat) not based on mere power (machtstaat)",¹ as a rule of law country, Indonesia has a series of regulations or laws so that the interests of society can be protected.² The 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which is the constitutional foundation of this country, states that one of the goals of the state is to create general welfare. So all efforts and development carried out by this country must lead to this goal so as to create people's welfare.

The law is actually a reflection of the social life of a society where the law is formed. It can be said that law is a function of the social history of a society, but law is not a static social building, but it can change and this change occurs because of its function to serve society.³ A law in society does not always act as a barrier to social change. The existence of a community attitude that cares about the law can function

¹Anton Susanto, Ira Alia Maerani, and Maryanto. (2020). Legal Enforcement by the Police against Child of Criminal Doer of a Traffic Accident Who Caused Death (Case Study in Traffic Accident of Police Traffic Unit of Cirebon City Police Jurisdiction), *Jurnal Daulat Hukum*: 3 (1), <http://jurnal.unissula.ac.id/index.php/RH/article/view/8402/3928>

²Asep Sunarsa. (2018). Attorney Role In Fighting Crimes Of Motorcycle Gang In Cirebon, *Jurnal Sovereign Law* 1 (2), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3291/2424>

³H. Zamhari Abidin. (1996). *Definition and Principles of Criminal Law*, Ghalia Indonesia, Jakarta, page 84.

as a source of extraordinary strength for the peace of the association of the community itself.⁴

Along with the times, humans need rules that are in accordance with the times as well. One of the tasks of government in a country is to formulate regulations whose main purpose is to create justice, certainty, and benefits for society. This is as meant in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which explains that Indonesia is a country based on law.⁵

In the division of conventional law, criminal law is included in the field of public law. This means that criminal law regulates the relationship between citizens and the state and focuses on the public interest or the public interest. Historically, the legal relations that existed at first were personal or private relations, but in the course of time things were taken over by groups or tribes and finally after the founding of the State they were taken over by the state and made public interests. We can see clear evidence in the Criminal Code (KUHP) Article 344 that anyone who seizes the life of another person at the request of the person himself who is clearly stated in sincerity is threatened with imprisonment for a maximum of twelve years.⁶

The law and its functions regulate all aspects of the life of the nation and state and can make a maximum contribution to implementation if law enforcement officials and all levels of society comply with and comply with legal norms. In the event of a traffic accident (lakalantas) must be separated between violations and crimes. Because in order to prosecute before the law, the incident that occurs must be a crime, while in a traffic accident the crime that occurs is an unintentional crime or caused by an act of negligence or negligence or in legal language, namely culpa.

In a legal review to declare someone guilty, the issue of criminal responsibility must be considered for someone who because of their negligence causes the death of another person. Criminal liability relates to a person's guilt.⁷The error referred to here is an error caused by intention (intention/opzet/dolus) and negligence (negligence or schuld).⁸

People often think that traffic accidents that cause death are always the fault of the driver of the vehicle concerned. Meanwhile, according to the prevailing legal theory that a person's fault is seen from the actual incident factors, what factors caused the traffic accident. This can be revealed from the chronology of events as well as eyewitnesses who saw the accident occur. In the case of traffic accidents that cause fatalities, it is very complex to determine criminal offenders and is not just a mere normative matter.

⁴Sri Praptini, Sri Kusriyah, and Aryani Witasari. (2019). Constitution and Constitutionalism of Indonesia, *Sovereign Law Journal*: 2 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897>

⁵Miftah Ansari. (2018). Investigations of Corruption in Police Resort of Pati, *Journal of Daulat Hukum* Volume 1 (2), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3319/2450>

⁶Teguh Prasetyo. (2012). *Criminal Law*, Jakarta, Rajawali Press, page 1.

⁷Leden Marpaung. (2002). *Crime Against Life and Body*, Sinar Graphic, Jakarta, page 20

⁸Leden Marpaung. (2005). *Principles of Theory of Criminal Law Practice*, Sinar Graphic, Jakarta, p.9

From the things described above, the author's intention arises to establish the purpose of writing, namely to study and analyze the substance of the criminal aspects of traffic law products in regulating acts of negligence (*culpa*) that cause victims to die.

2. Writing Method

To conduct an assessment in this writing the authors use the normative juridical method. Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this writing, secondary data collection methods were used which were obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Discussion

3.1. The Substance of Criminal Aspects of Traffic Law Products in Regulating the Act of Negligence (*Culpa*) Causing the Victim's Death

Traffic (Traffic) is defined as "pedestrians, ridden, or herded animals, vehicles, trams, and other conveyances either singly or together while using any highway for purposes of traffic" (pedestrians, animals that are ridden or herded, vehicles, trams, etc.) other means of conveyance, either individually or collectively, using the road for their destination.⁹

After going through quite a long time and based on the spirit of reform and subsequent changes, Law Number 22 of 2009 concerning Road Traffic and Transportation was formed as a form of amendment to Law Number 14 of 1992 concerning Road Traffic and Transportation. In Law number 22 of 2009, the Law sees that road traffic and transportation have a strategic role in supporting national development and integration as part of efforts to promote general welfare. In the body of this law it is explained that the objectives to be achieved by this law are:

- a) Realization of road traffic and transportation services that are safe, secure, orderly, smooth, and integrated with other modes of transportation to boost the national economy, advance public welfare, strengthen national unity and integrity, and be able to uphold national dignity.
- b) Realization of traffic ethics and national culture.
- c) Realization of law enforcement and legal certainty in society.

Seeing some of the explanation above, basically Law Number 22 of 2009 concerning Road Traffic and Transportation is a complement to the overall changes to the Law concerning Road Traffic and Transportation and is in effect today. Thus, as the newest law, the position of Law no. 22 of 2009 has power with legitimacy on the principle of *lex posteriori derogat legi priori* which means that the latest law overrides the old law. This principle is usually used in both national and international law.¹⁰

⁹Djajoesman, (1996), *Police and Traffic*. Second Printing, Jakarta: Cipta Bina, page 8

¹⁰Wirjono Prodjodikoro. (2014). *Principles of Indonesian Criminal Law*, Bandung: PT Refika Aditama, page 27

The error of the vehicle driver can be concluded that the driver did not obey traffic rules. For example, the driver does not give a signal to turn, drives the car not in the left lane, at an intersection does not give priority to other vehicles coming from the left, and drives the car too fast beyond the speed limit specified in traffic signs. Thus, the main factor for accidents is vehicle drivers who are not careful and neglect to drive their vehicles. The mistake of a vehicle driver who commits an oversight resulting in death can be said that the person has committed a crime.¹¹

In the Criminal Code ("KUHP"), negligence is usually also referred to as error, carelessness or negligence. This can be seen in R. Soesilo's explanation of Article 359 of the Criminal Code, in his book entitled *The Criminal Code (KUHP) and its Complete Commentary Article by Article*, which says that "because of his fault" is the same as being careless, negligent, forgetful, very inattentive.¹²

Article 359 of the Criminal Code:

"Whoever because of his mistake (negligence) causes another person to die, is threatened with imprisonment for a maximum of 5 (five) years or imprisonment for a maximum of 1 (one) year".

Furthermore, in Article 360 of the Criminal Code it is stated that:

- (1) Whoever because of his fault causes a person to be seriously injured is punished by imprisonment for a maximum of five years or a maximum imprisonment of one year.
- (2) Whoever because of his mistake causes a person to be injured in such a way that that person becomes temporarily sick or unable to carry out his position or work temporarily, shall be punished with a maximum imprisonment of nine months or a maximum imprisonment of six months or a maximum fine Rp. 4500.

We see that in these Articles there is no limitation on guilt/negligence on the type of act committed by the defendant. Based on the above regulations, R. Soesilo in his explanation said that the death of people here was not intended by the defendant at all, but the death was only the result of the defendant's inattentiveness or negligence.¹³

Legal provisions regarding traffic accidents in general were previously regulated in Articles 359, 360, 361 of the Criminal Code and specifically regulated in Law no. 22 of 2009 concerning Road Traffic and Transportation. In the event of a traffic accident, the legal provisions that must be imposed refer to Law Number 22 of 2009 concerning Road Traffic and Transportation. This is due to the provisions of Article 63 paragraph (2) of the Criminal Code which reads:

If an act is included in a general criminal rule, it is also regulated in a special rule, then only the special one is applied".

¹¹Andi Zeinal Marala. (2015). *Enforcement of Criminal Law Against Negligence of Drivers Causing Highway Accidents*, Lex Crimen, IV (5), p. 134.

¹²R. Soesilo. (1991). *The Criminal Code (KUHP) and the Comments Complete Article by Article*, Jakarta: Politeia, page 23.

¹³Ibid., p. 249.

The application of Article 63 paragraph (2) of the Criminal Code mandates the Public Prosecutor in drawing up his indictment and the Panel of Judges in adjudicating it to apply the provisions contained in Law no. 22 of 2009 concerning Road Traffic and Transportation, and is not a provision in the Criminal Code. The enactment of Law Number 22 of 2009 concerning Road Traffic and Transportation made Article 359 of the Criminal Code no longer used in the application of sanctions for traffic negligence which caused the loss of other people's lives. This is in accordance with the use of the principle, namely the principle of *Lex Specialis Derogat Legi Generalis* which means that the principle of legal interpretation states that specific laws override general laws.¹⁴

Law Number 22 of 2009 concerning Road Traffic and Transportation contains high criminal provisions. The article relating to traffic negligence that causes the loss of other people's lives is Article 310 paragraph 4, namely:

"In the case of an accident as referred to in paragraph 3 which results in the death of another person, the penalty shall be imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 12,000,000.00 (twelve million rupiahs)".

From the formulation of Article 310 paragraph 4, to fulfill the conditions for an offense, the following elements must be met:

1) Each person

That what everyone means is a person with an identity as described in the indictment who is submitted to the trial because he is accused of having committed a crime as described in the indictment.

2) Who drives a motorized vehicle

That what is meant is everyone who drives a motorized vehicle.

3) Because of his negligence resulted in a traffic accident with other people died

Whereas what is meant is in the event of an accident resulting in the death of another person, the penalty shall be imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 12,000,000.00.¹⁵

Regarding the obligations and responsibilities of drivers, motorized vehicle owners, and/or transportation companies, this has been regulated in Article 234 paragraph (1) and Article 231 paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation which reads:

Drivers, motorized vehicle owners, and/or public transportation companies are responsible for losses suffered by passengers and/or goods owners and/or third parties due to the driver's negligence.¹⁶

The regulations in Article 234 paragraph (3) of Law Number 22 of 2009 concerning Road Traffic and Transportation, the provisions referred to above do not apply if:

- a. There are coercive circumstances that are unavoidable or beyond the ability of the driver;

¹⁴Adam Chazawi. (2002). Lesson of Criminal Law Part 2, Jakarta, Raja Grafindo Persada, page 33.

¹⁵Ruslan Regggong. (2016). Special Criminal Law: Understanding Offenses Outside the Criminal Code, Jakarta: Prenadamedia Group, page 311.

¹⁶Article 234 paragraph (1) Law Number 22 of 2009 concerning Road Traffic and Transportation.

- b. Caused by the behavior of the victim himself or a third party; and/or
- c. Caused by the movement of people and/or animals even though precautions have been taken.¹⁷

Sanctions imposed on drivers who are negligent in driving their vehicles are not only in the form of crime, but there is also accountability in the form of providing assistance to heirs in the form of medical expenses and or funeral expenses. As stated in Article 235 of Law no. 22 of 2009 concerning Road Traffic and Transportation, namely:

- 1) If the victim dies as a result of a Traffic Accident as referred to in Article 229 paragraph (1) letter c, the Driver, owner and/or Public Transport Company is obliged to provide assistance to the victim's heirs in the form of medical expenses and/or funeral expenses without dropping the criminal case charges. .
- 2) If an injury occurs to the victim's body or health as a result of a traffic accident as referred to in Article 229 paragraph (1) letter b and letter c, the driver, owner and/or public transport company is obliged to provide assistance to the victim in the form of medical expenses without dropping the criminal charge.¹⁸

This article is emphasized in particular in the words "do not abort criminal charges". This means that even though the driver of the vehicle as the crashing party has provided payment of a sum of money or compensation by the crashing party to the victim as a reimbursement for medical expenses at the hospital or providing compensation costs for victims who have died to the victim/victim's family but still not aborting criminal charges or in other words the legal process must continue.

The measure for determining whether an act is unlawful or not is the law. Even if an act materially (the values that live in society) is not considered as an act that is contrary to the values that live in society, but if it is formally formulated in law as a prohibited criminal act, then the act is still formally considered as an unlawful act. Thus the unlawful nature of an act that has been formulated in a law can only be abolished by law.¹⁹

Criminal responsibility is defined as continuing the objective reproach that exists for a criminal act and subjectively that exists which fulfills the requirements to be punished for that action. The basis for the existence of a criminal act is the principle of legality, while the basis for the punishment of the maker is the principle of error. This means that the perpetrator of a criminal act will only be punished if he has a fault in committing the crime. When is someone said to have a fault regarding the issue of criminal liability.

4. Closing

The application of Article 63 paragraph (2) of the Criminal Code mandates the Public Prosecutor in drawing up his indictment and the Panel of Judges in adjudicating

¹⁷Article 234 paragraph (3) Law Number 22 of 2009 concerning Road Traffic and Transportation

¹⁸Article 235 Law Number 22 of 2009 concerning Road Traffic and Transportation

¹⁹Stick. (2008). Basics of Indonesian Criminal Law in the Perspective of Renewal, Malang: UMM Press, page 196

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