

Manifestation Of Criminal Sanctions In The Judicial Process On Criminal Actor Of Negligence (*Culpa*)

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Abstract.

The purpose of this research is to study and analyze manifestation of criminal sanctions in the process of prosecuting the perpetrator of a criminal offense due to negligence (Culpa). In this study the authors used sociological juridical methods with descriptive research specifications. The data sources used are primary and secondary data. Based on the results of the research, the conclusion is that in case No.207 / Pid.Sus / 2019 / PNClcp, it is in accordance with the provisions of both formal criminal law and material criminal law and the conditions that can be convicted of a defendant, this is based on trial examination, where the evidence submitted by the public prosecutor, including the testimony of the witnesses which are compatible with the statement of the defendant who honestly admitted to the act he had committed, the Panel of Judges at the Cilacap District Court in the case stated that the elements of the defendant's actions matched the formulation of the offense contained in Article 310 paragraph (4) of Act No. 22 of 2009 on Traffic and Road Transportation.

Keywords: Criminal; Sanctions; Judicial; Negligence.

1. Introduction

In Article 1 paragraph 3 three of the 1945 Constitution (UUD) of the Republic of Indonesia it is very clear and is indeed in accordance with the fact that Indonesia is a rule of law (*rechtsstaat*),¹ and absolutely not (*machtstaat*).² The law itself is a very formless law because it can be interpreted by each person differently depending on where he understands it and interprets it.³ According to Achmad Ali, a legal expert, law is: "A set of systematic rules or benchmarks in a system that Diana can give results whether or not it is done by someone who is listed as a citizen of a country in her life. The law itself originates from the citizens themselves or others who are considered to exist within the citizenship, and are also carried out by residents in their whole life. If it is violated the highest will give punishment of an external form".⁴

According to legal expert Van Apeldoorn, criminal events have two legal aspects, namely an objective perspective and a subjective perspective. As for what is meant by an objective perspective, a criminal incident is an act of taking or not

¹ The Constitution of the Republic of Indonesia 1945, Article 1 paragraph (3)

² Anirut Chuasanga, Ong Argo Victoria, *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol.2 No.1, March 2019, url: <http://jurnal.unissula.ac.id/index.php/RH/issue/view/328>

³ Achmad Ali, 2008, *Menguak Tabir Hukum*, Bogor, Ghalia Indonesia, p. 1

⁴ *Ibid*, p. 30

doing something that is contrary to positive law and of course without rights (onrechtmatigheid).⁵

Law in Indonesia is basically created to regulate and direct human or community behavior towards goodness, it is reduced in law, written or unwritten. The law has consequences for punishments that must be received for lawbreakers themselves, from social sanctions, sanctions and even imprisonment for violators of the regulations.⁶ In the discussion of criminal law, it cannot be separated from the problems that exist in it as well, one of the main problems of criminal law here is none other than the criminal act itself. The three main problems of criminal law are (1) the problem of prohibited acts and punishable by criminal or criminal acts, (2) the problem of criminal liability of the perpetrator or the mistake and (3) the problem of sanctions or punishment.⁷

In a criminal act, D. Simons distinguishes the elements of a crime into an objective element and a subjective element. The objective elements in a criminal act include; (1) actions of people; (2) the visible result of the act; (3) there may be certain circumstances accompanying the act. Meanwhile, the subjective element in the criminal act includes: (1) a person who is capable of being responsible; (2) there is an error (*dolus* or *Culpa*).⁸

Nowadays, cases that often experience pros and cons in the legal field are cases related to negligence. The negligence that is usually done by most people is in the case of traffic accidents, especially those accidents that have resulted in the victim's death. In the Criminal Code (KUHP) in Indonesia, a person can be convicted of negligence as regulated in Article 359 of the Criminal Code. In the element of negligence or negligence in Article 359 of the Criminal Code, it is said that it is more general in nature or has a broad scope. Indeed, all acts of negligence that can cause another person to die can be charged under Article 359 of the Criminal Code. However, with the issuance of Act No. 22 of 2009 concerning Road Traffic and Transportation.⁹ So the element of negligence or negligence in Article 359 of the Criminal Code regulates negligence which is general in nature and has a broad scope.¹⁰ Not about negligence caused by traffic accidents.

In this research it is linked to a case study in one of the decisions at the District Court in Cilacap on decision Number 207 / Pid.Sus / 2019 / PNClcp, a case in that decision in which the charges against the defendant in the criminal element were in the form of a criminal act, namely driving a motorized vehicle. Which due

⁵ L.J. Van apeldoorn, 1993, *Pengantar Ilmu Hukum*, Jakarta, Pradnya Paramita, ed. 25, p. 326

⁶ M.Gargarin Friyandi, Aryani Witasari, *Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Semarang*, Jurnal Daulat Hukum, Vol.2 No.1, March 2019, url: <http://jurnal.unissula.ac.id/index.php/RH/issue/view/328>

⁷ Sudaryono and Natangsa Surbakti, 2005, *Buku Pegangan Kuliah Hukum Pidana*, Surakarta, Faculty of Law, University of Muhammadiyah Surakarta, p. 111

⁸ *Ibid*, p. 115

⁹ Bobby Anugrah Rachman, Anis Mashdurohatun, dan Achmad Sulchan, *Traffic Effectiveness by Law Enforcement Community Through Which are Ticketed Traffic Law in Police of Pekalongan*, Jurnal Daulat Hukum, Vol.2 No.1, March 2019, url: <http://jurnal.unissula.ac.id/index.php/RH/issue/view/328>

¹⁰ Radius Affiando, 2012, *Tindak Pidana Kealpaan Dalam Hukum Pidana Indonesia: Suatu Tinjauan Juridis Kecelakaan Lalu Lintas di Jalur Transjakarta*, Law Studies Program, University of Indonesia, p. 1

to his negligence resulted in a traffic accident and as a result of the accident another person died. Violating Article 310 paragraph (4) of Act No. 22 of 2009 concerning Road Traffic and Transportation in a single indictment.

2. Research Methods

To conduct a study in this study the author uses the sociological juridical method (social legal research). Juridical is an approach that uses legal principles and principles derived from written regulations, sociology is an approach that aims to clarify the real situation that exists and appears in society regarding the problem being researched or gives importance to observation steps. This research uses this type of research with descriptive methods. The data used for this research are primary and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. Then secondary data is data obtained from library research consisting of primary legal materials.

3. Results And Discussion

Criminal law is part of public law, because it involves the public interest. Criminal law experts say that for the existence of criminal responsibility three (3) conditions must be met, namely:

- a. There must be an act that can be convicted, which is included in the formulation of legal offenses;
- b. The punishable act must be contrary to the law;
- c. There must be some blame on the perpetrator.¹¹

In Indonesia, the state apparatus that has the authority to judge and impose legal sanctions rests with the judiciary. Where the judiciary is a state official who has the authority to hear cases or problems that occur in the community we know as Judges. In the explanation, it can be seen the amount of responsibility of a judge. In deciding a case a judge experiences what is called an inner turmoil in deciding a case where he must consider the sense of justice felt by the community to produce the fairest possible decision.¹²

Legal sanctions are usually given at the end of the proceedings before the court. Usually the judges have to make a decision. The decision of the judges has three alternatives: first, if the case is proven then the defendant is punished, second, if the case is not proven then the defendant is released, and third, if the act is proven but not a criminal act then the defendant is released from all charges (*Onslag*). Based on the theory of proof of negative law, the decision of the judges in a case must be based on the conviction of the judge himself and two of the five pieces of evidence. The judge may not impose a sentence on a person, unless, with

¹¹ Aprianto J. Muhaling, *Kelalaian yang Mengakibatkan Matinya Orang Menurut Perundang-Undangan yang Berlaku*, Jurnal Hukum, Lex Crimen, Vol VIII No.3, March 2019, p. 33

¹² Jajang Supriyatna, Sri Endah Wahyuningsih, *Criminalization Analysis Of Gambling Crime In The District Court Of The Kudus And Policies That Will Come In Penal Code Reformation*, Jurnal Daulat Hukum, Vol.2 No.1, March 2019, url: <http://jurnal.unissula.ac.id/index.php/RH/issue/view/328>

at least two valid pieces of evidence he is convinced that a criminal act actually occurred and that the defendant was guilty of committing it. The five categories of evidence are witness statements, expert statements, letters, instructions and statements from the defendant.¹³

After deciding whether or not the judge is guilty, the judge must determine the matter of penalty, based on the prosecutor's demands and his own opinion of the defendant. Depending on his opinion, the judge may impose a sentence that is lighter or heavier than the prosecutor demands. In this case, the manifestation of criminal sanctions in the process of adjudicating perpetrators of wrongdoing due to negligence (*Culpa*), can be seen in the author's analysis of the decision on Case No.207 / Pid.Sus / 2019 / PNClcp which in the process of trial the verdict is as follows:

That the Defendant Wasito, on Wednesday 1 May 2019 at around 03.10 WIB or at least at a certain time in May 2019 took place on St.Kroya-Adipala (*Bulak Sawah*) joined Sikampung Village RT 03/04 Dist. Kroya or at least in another place which is still part of the jurisdiction of the Cilacap District Court, drives a Vehicle which due to his negligence has resulted in another person's death. Initially the defendant drove a Kbm Tronton Truck with police no. AA-1925-BA filled with silica sand weighing around 33 tons, departing from Rembang on Tuesday, April 30 at around 06.30 WIB with the aim of Holcim Cement Factory of Cilacap, during the trip to Cilacap the defendant had several breaks. First in the district of Demak for about 1 hour, both around the Ambarawa circle for about 2 hours, third in the company garage (PT Maju Makmur) in the Magelang area and the fourth in the Purworejo area, then the defendant continued his journey back to Cilacap and on Wednesday May 1 2019 at around 02.50 Kbm while on St. Kroya-Adipala (rice field bulak) joined Sikampung Village RT 03/04 Dist. Kroya Cilacap, the tronton truck that the defendant had driven on strike (the engine was off) but the defendant did not put up the safety triangle signs and did not turn on the hazad lights, only turned on the right handlebar light even though it was dark in that place (there was no street lighting) then it was hit.¹⁴

Based on its decision, taking into account the single indictment of the Public Prosecutor, namely Article 310 paragraph (4) of Act No. 22 of 2009 concerning Road Traffic and Transportation and other relevant laws and regulations, the Panel of Judges stated that the defendant was found guilty and decided:

- a. Stating that the defendant Wasito bin Hadi Iswanto was legally and convincingly proven guilty of committing the crime of "driving a motorized vehicle which due to his negligence resulted in a traffic accident and caused other people to die";
- b. Sentenced the defendant Wasito bin Hadi Iswanto to imprisonment for 1 (one) year and 6 (six) months;
- c. Imposing a fine on the Defendant in the amount of Rp.5,000,000 (five million rupiah) provided that if the fine is not paid, the Defendant must undergo a penalty in lieu of fines in the form of imprisonment for 2 (two) months;

¹³ Article 183 Code of Criminal Procedure Code

¹⁴ Excerpt of Case Decision No. 207 / Pid.Sus / 2019 / PNClcp

- d. To determine that the entire period of arrest and detention the Defendant has served is reduced from the sentence imposed;
- e. Determine that the Defendant remains detained;
- f. Determine evidence in the form of: 1 (one) unit of KBM Hino Tronton Truck AA-1925-BA along with STNK (Returned to PT Matrix Makmur Abadi Magelang; 1 (one) unit of KBM Suzuki Aerio with police no. R-9443-AK along with the STNK (Returned to the rightful through witness Sukirman).
- g. To charge the Defendant to pay a court fee of Rp 2,500, - (two thousand and five hundred rupiah).¹⁵

Based on the position of the case as described above, it can be concluded that it is in accordance with the provisions of both formal criminal law and material criminal law and the conditions that can be convicted of a defendant, this is based on a trial examination, where the evidence submitted by the public prosecutor includes information. witnesses who agree with each other plus the statement of the defendant who honestly admitted the act he had committed, the Panel of Judges at the Cilacap District Court stated that the element of the defendant's act had matched the formulation of the offense contained in Article 310 paragraph (4) of Act No. 22 of 2009 concerning Road Traffic and Transportation.

In the case of case No.207 / Pid.Sus / 2019 / PNClcp, Kartijono, who in that case acted as the chief judge in imposing criminal sanctions on the defendant Wasito explained that the application of criminal law by the judge was appropriate because the element of the act matched the formulation of the offense, where it was applied Article 310 paragraph (4) of Act No. No. 22 of 2009. However, in terms of the effectiveness of the criminal sanctions imposed, the Panel of Judges handed down a lighter sentence than the prosecutor's demands, namely imprisonment for 1 (one) year and 6 (six) months and a fine of IDR 5,000,000 (five million rupiah) which where the prosecutor demands imprisonment for 3 (three) years and 6 (six) months and a fine of Rp.10,000,000 (ten million rupiah) because there is a judge's consideration of the burdensome and mitigating matters inherent in the Defendant.¹⁶

As for the other views of the panel of judges on their decision in case No.207 / Pid.Sus / 2019 / PNClcp according to Kartijono, the chronology in the facts in the trial was one thing that became a clue for the Panel of Judges in assessing the negligence of the accused Wasito, that not entirely because the accident occurred due to the negligence of the defendant, there were other elements that caused the accident which caused 4 (four) victims to die, namely in terms of infrastructure, namely the availability of street lights as an obligation of related agencies in the Cilacap area in providing security and safety for motorized vehicle drivers. in the area where the incident occurred.

This is a guide for the Panel of Judges based on the testimony of the Defendant and based on the evidence presented, legal facts are obtained. In this case Kartijono concluded, the infrastructure element in the scope of traffic is very

¹⁵ Excerpt of Case Decision No. 207 / Pid.Sus / 2019 / PNClcp

¹⁶ Interviews with Human Resource Officer, Kartijono, SH.MH, Judges at the Cilacap District Court, on July 30, 2020

influential in every accident. Although the defendant has a large percentage of guilt, a good and adequate infrastructure will minimize the severity of an accident. As for being correlated in case No.207 / Pid.Sus / 2019 / PNClcp, if at the scene of the incident, namely on St.Kroya-Adipala (*Bulak Sawah*) to join Sikampung Village RT 03 RW 04 Dist. Kroya Cilacap equipped with street lights will provide anticipation from the point of view of the victim's Suzuki Aerio driver.¹⁷

But basically, the principle of no crime without error attached to the defendant of a criminal offense due to negligence (*Culpa*) must still be processed under criminal law because the fulfillment of the criminal element is an error in the form of negligence (*Culpa*) which has been listed in the statutory substance of the Criminal Code as well as in the scope of traffic accidents in the Road Traffic and Transportation Law.¹⁸

Criminalization is a process. Before this process takes place, the role of the judge is very important. He concretized criminal sanctions contained in a regulation by imposing penalties on the accused. So, the punishment imposed is expected to be able to resolve conflicts or conflicts and also bring a sense of peace in society. Criminalization is not intended to cause distress and is not allowed to demean human dignity, but rather to give meaning to the Indonesian legal system. Even though the punishment is in essence a sorrow, punishment is not intended to distress and it is not allowed to demean human dignity.¹⁹

Regarding this negligence, the official statement from the founder of *Weet Boek Van Straffrecht*, which is shortened to WVS, is that in general, for crimes in legislation requires that the will of a person be directed at an act which is prohibited and punishable by punishment. Apart from that, the conditions that are prohibited may be mostly dangerous to public safety regarding people or goods and if they occur it causes a lot of harm, so that the wet must also act against those who are not careful, who are careless who cause the situation because of his negligence. Here the mental attitude of the person who gives rise to the forbidden condition is not against the prohibitions, he does not want or approve of the occurrence of forbidden things, but his fault.²⁰

4. Closing

Based on the position of the case in case No.207 / Pid.Sus / 2019 / PNClcp, it is in accordance with the provisions of both formal criminal law and material criminal law and the conditions that can be convicted of a defendant, this is based on trial examination, where the evidence presented by the prosecutor the public prosecutor, including the testimony of the witness which is compatible with the statement of the defendant who honestly acknowledged the act he had committed, the Panel of Judges at the Cilacap District Court in the case stated that the element of the defendant's act had matched the formulation of the offense contained in

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Andi Hamzah, 1986, *Sistem Pidana dan Pemidanaan Indonesia dari Retribusi ke Reformasi*, Pradya Paramita, Jakarta, p. 112

²⁰ Andi Zaenal Marala, Law Enforcement Against Driver Negligence that Cause Road Accidents, Legal Journal, Lex Crimen Vol. IV No.5, July 2015, p. 136

Article 310 paragraph (4) of the Act No. 22 of 2009 concerning Road Traffic and Transportation.

For elements of the State legislature, negligent acts are a form of wrongdoing by someone, therefore the Criminal Code must clearly regulate in the article what is meant by acts of negligence, what is the meaning of negligence, what are the elements not only through the opinions of the experts only; For all apparatuses of judges, it is not necessarily based on the letter of demands of the Public Prosecutor in imposing a criminal offense in adjudicating the perpetrator of a criminal offense due to negligence, but on two valid evidence instruments coupled with the judge's conviction through the quality of the judge's analysis. The judge must be more sensitive to see what facts arise during the trial, so that the facts that arise give rise to the judge's conviction that the defendant can or cannot be convicted; The high number of crimes of negligence that led to the death of other people should be able to conduct socialization about the dangers that arise from carelessness so as to increase public awareness to be careful or comply with applicable regulations.

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