

Legal Review of Traffic Accidents Resulting in Death

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Abstract. *Traffic accidents often occur in various places throughout Indonesia. Traffic accident victims are of several groups, whether minor, severe, or death. In this study, the author would like to describe the legal review of traffic accidents that result in fatalities.*

In this study, the approach method used is: sociological legal approach or approach by direct review in the field. The research specification used is Analytical Descriptive, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of all matters related to the legal review of traffic accidents resulting in fatalities.

The author believes that it is important to enforce and protect the law against victims and perpetrators who experience traffic accidents. This aims to ensure that victims and perpetrators are processed in accordance with applicable laws and receive their rights accordingly.

Keywords: Accident; Enforcement; Victims.

1. Introduction

The rapid development of transportation technology has increased traffic accidents. On the one hand, it has caused the reach and range of transportation to be wider, on the other hand, it has become a very serious cause of death in recent decades. Traffic problems are one of the national scale problems that develop in line with the development of society. The data shows that twenty-five people die every day or one person dies on the highway every fifty-seven minutes. In a legal study to declare someone guilty, it must consider the issue of criminal responsibility for someone who due to their negligence causes the death of another person. Meanwhile, according to the applicable legal theory, a person's fault is seen from the actual incident factors, what factors caused the traffic accident. This can be expressed from the chronology of the incident and the eyewitnesses who saw the accident. In the case of a traffic accident that causes fatalities, it is very complex to determine the perpetrator of the crime and not just a normative matter.

2. Research Methods

This study uses normative legal research, namely using norms in laws with a conceptual approach and a special approach. The method used in this study is

normative juridical. This study goes through the stages of literature study, the data obtained is then analyzed through a qualitative analysis approach. Qualitative data processing and analysis generally emphasizes its analysis on the process of deductive and inductive conclusions and the dynamics of the relationship between observed phenomena using scientific logic.

3. Results and Discussion

3.1 Implementation of Positive Indonesian Law on Traffic Accidents Resulting in Death

The existence of the crime of traffic accidents in the Criminal Code can be understood based on Article 103 of the Criminal Code which states, "The provisions of the first eight chapters of this book also apply to acts that can be punished according to other laws, unless there is a law (wet) general action of the Government (Algemene maatngelen van bestuur) or ordinance that determines other regulations". In legal science, what is regulated in Article 103 above is known as the principle of *lex specialis derogat legi generalis* or special legal provisions override general legal provisions. In the Criminal Code, this is regulated in Article 338 which states that anyone who intentionally takes the life of another person, is punished for capital treason, with a maximum prison sentence of fifteen years. In Law Number 22 of 2009 concerning Traffic and Road Transportation, it is regulated in Article 311. For this matter, the application in criminal acts of traffic accidents, then what is used is Article 311 of Law Number 22 of 2009 concerning Traffic and Road Transportation (which is *lex specialis*) and not Article 338 of the Criminal Code (which is generalist)

The law specifically regulating traffic is Law Number 22 of 2009 concerning Traffic and Road Transportation. The issuance of this law aims to ensure that traffic and road transportation have a strategic role in supporting national development and integrity as part of efforts to advance public welfare as mandated by the Constitution of the Republic of Indonesia and is also part of the national transportation system whose potential and role must be developed to realize security, safety, order, and smooth traffic.

Traffic Accidents according to Law Number 22 of 2009 concerning Traffic and Road Transportation Article 1 point (24) are an unexpected and unintentional incident on the road involving vehicles with or without other road users resulting in human casualties and/or property losses. In traffic accidents that occur, the victims often do not receive full legal protection in accordance with the rights that accident victims should receive and have.

Based on Article 310 of Law Number 22 of 2009 concerning Traffic and Road Transportation, the following forms of sanctions for traffic accidents have been determined:

1. Any person who drives a motor vehicle who, due to his negligence, causes a traffic accident with damage to the vehicle and/or goods as referred to in Article 229 paragraph (2), shall be punished with imprisonment for a maximum of 6 (six) months and/or a maximum fine of IDR 1,000,000.00 (one million rupiah).

2. Any person who drives a motor vehicle who, due to his negligence, causes a traffic accident resulting in minor injuries and damage to the vehicle and/or goods as referred to in Article 229 paragraph (3), shall be punished with imprisonment for a maximum of 1 (one) year and/or a maximum fine of IDR 2,000,000.00 (two million rupiah).

3. Any person who drives a motor vehicle who, due to his negligence, causes a traffic accident resulting in serious injuries as referred to in Article 229 paragraph (4), shall be punished with a maximum prison sentence of 5 (five) years and/or a maximum fine of IDR 10,000,000.00 (ten million rupiah).

4. In the case of an accident as referred to in paragraph (3) which results in the death of another person, the perpetrator 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). Providing compensation, assistance, assistance to victims is a customary practice in society. This is done voluntarily and is accepted in society without looking at whether it is true or not in the case of a traffic accident. Drivers who commit a crime that causes harm to the victim are required to be responsible for replacing the loss in accordance with Article 1365 of the Civil Code. However, this is often ignored by drivers to replace the losses experienced by the victim.

In the provisions of Article 231 Paragraph (1) of Law Number 22 of 2009 concerning Traffic and Road Transportation, it discusses the obligations and responsibilities of Motor Vehicle Drivers involved in Traffic Accidents, who are required to:

1. stop the vehicle he is driving;
2. provide assistance to victims;
3. report the accident to the nearest Indonesian National Police; and
4. provide information related to the accident.

The sanctions that can be received by drivers who are negligent in driving are not only in the form of criminal penalties, but there is also accountability in the form of providing assistance to heirs in the form of medical expenses and/or funeral expenses. This is regulated in Article 235 of the Traffic and Road Transportation Law which reads:

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 transportation company are required 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) letters b and c, the driver, owner and/or Public Transportation Company are obliged to provide assistance to the victim in the form of medical expenses without dropping the criminal case charges."

The article above states that "it does not dismiss the criminal case", meaning that even though the party who hit the victim has paid a sum of money or compensation to the victim as compensation for medical expenses at the hospital or provided compensation for the deceased victim, it does not affect the criminal case, in other words, the legal process must continue to completion. This is

because the criminal act regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation, known as the crime of traffic accidents, is not a complaint offense, but rather an ordinary crime, so that even if there is a payment made by the driver or the person who hit the victim's family, this will not eliminate the element of the criminal act committed or will not stop the investigation and/or prosecution process carried out for the crime of traffic accidents in question.

In addition to criminal liability that can be imposed with the threat of criminal penalties, both principal and additional penalties as described above, the driver or the person who hit the vehicle can be subject to civil liability in the form of a claim for compensation as also regulated in Article 314 of Law Number 22 of 2009 concerning Traffic and Road Transportation. Civil liability is carried out by filing a lawsuit for unlawful acts (*onrechtmatige daad*) as regulated in Article 1365 and Article 1366 of the Civil Code which stipulates:

The provisions of Article 1365 of the Civil Code state: "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his/her fault to replace the loss." Furthermore, Article 1366 of the Civil Code stipulates that every person is responsible, not only for losses caused by actions, but also for losses caused by his/her negligence or recklessness.

What has been regulated in Article 1365 of the Civil Code is an unlawful act that is done intentionally. Whereas if the act is not done intentionally but due to negligence or carelessness, then a lawsuit for unlawful acts is filed based on Article 1366 of the Civil Code. Filing a civil lawsuit based on Article 1365 and/or Article 1366 of the Civil Code is based on the legal principle that criminal liability will never eliminate civil liability. In other words, by convicting someone, this will not preclude the filing of a civil lawsuit for damages based on a lawsuit for unlawful acts.

Law Number 22 of 2009 concerning Traffic and Road Transportation contains high criminal provisions. The provisions of Article 310 are articles related to negligence in traffic that causes death.

The provisions of Article 310 Paragraph (4) are articles that are closely related to traffic negligence that causes death. To fulfill the requirements for a crime in Article 310 Paragraph (4) above, the following elements must be met:¹

1. Each person
2. The person driving the motor vehicle
3. Due to his negligence, a traffic accident resulted in the death of another person.

Thus, drivers who commit criminal acts of traffic negligence resulting in death are threatened with a maximum prison sentence of 6 (six) years or a fine of Rp. 12,000,000.00 based on the provisions of Article 310 Paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation. Article 311 of Law Number 22 of 2009 concerning Traffic and Road Transportation regulates traffic accidents

¹Ruslan Renggong, 2016, *Special Criminal Law: Understanding Offenses Outside the Criminal Code*, Prenadamedia Group, Jakarta, p. 311.

caused by people deliberately driving motor vehicles in conditions that endanger other people.

In addition, in the provisions of Article 314 of Law Number 22 of 2009 concerning Traffic and Road Transportation, it states that: "In addition to imprisonment, detention, or fines, perpetrators of Traffic crimes can be subject to additional penalties in the form of revocation of a Driving License or compensation for losses caused by the traffic crime." With the enactment of Law Number 22 of 2009 concerning Traffic and Road Transportation, Article 359 of the Criminal Code has been made unusable in the application of sanctions for negligence that causes death. This is related to the use of the principle of *Lex Specialis Derogat Legi Generalis*, which means that special laws override general laws.

3.2. Obstacles in the Process of Handling Traffic Accidents That Cause Death

The implementation of the legal process for criminal acts of driver negligence that cause traffic accidents and result in fatalities, is undeniably hampered by obstacles that affect the legal process for the case. From the results of the research conducted by the author, it is explained that these obstacles arise from various factors.

1. Investigator personnel availability factor

Police investigators in conducting evidence related to the suspicion that the suspect committed negligence are carried out by looking at the crime scene investigation. Not only the crime scene investigation, investigators also see whether the driver has used the principle of caution or not. In this case, investigators conduct crime scene investigation to be able to determine how the accident occurred by providing a mark at the place where the victim and evidence were found. After the marking, the crime scene was measured and police lines were installed. To facilitate the investigation, investigators made a sketch of the accident and conducted a fabrication of events. However, in this case, the implementation of the investigation had a few obstacles due to the availability of a minimal number of investigator personnel and affected the speed of performance in investigating a traffic accident case that caused the victim to die.

2. Lack of Witnesses

not all accident cases have witnesses because of time factors which if it occurs at night or early morning with limited quantity of people outside and the location where the location occurs in a place that is indeed undeniable such as a road along the forest where there are no people in place or where there happens to be no other drivers who witness the incident will have an impact on the difficulty of obtaining information because of an accident. This is homework for the police in this case the traffic accident unit to overcome obstacles in the technical implementation of the investigation.

3. The substance of positive Indonesian law is not yet just

The view from the side of law enforcement sees the many judges' decisions that give far from the maximum sentence causing a sense of dissatisfaction from various parties in seeing the negligence factor itself where the police always find

the driver's negligence that causes fatalities in accident incidents caused by fatal errors by drivers regarding vehicle equipment elements that are not equipped which is already a legal obligation and must be obeyed. This has an impact on trivializing the importance of vehicle equipment for the entire community and the results of punishment that are considered by the community to be still light for a criminal sentence. This greatly encourages the increase in the number of road accidents that originate from the stigma of society towards vehicle equipment that is considered trivial. Coupled with judges' decisions that often do not balance justice with consideration for the victim's family.

Law enforcement in all elements of criminal acts always creates obstacles that affect the implementation of law enforcement. However, every problem in law enforcement will always be solved with various aspects to overcome obstacles to the implementation of law enforcement.

Regarding the obstacles that occur, there needs to be an effort to resolve them, whether by increasing the number of investigators, providing CCTV on the road and/or reviewing the applicable laws.

4. Conclusion

The application of positive law on traffic accidents that cause death in legal science has been regulated in Article 103 which is known as the principle of *lex specialis derogat legi generalis* or special legal provisions override general legal provisions. In the Criminal Code, this is regulated in Article 338 which stipulates that anyone who intentionally takes the life of another person, is punished for capital treason, with a maximum prison sentence of fifteen years. In Law Number 22 of 2009 concerning Traffic and Road Transportation, it is regulated in Article 311. For this matter, its application in criminal acts of traffic accidents, then what is used is Article 311 of Law Number 22 of 2009 concerning Traffic and Road Transportation (which is *lex specialis*) and not Article 338 of the Criminal Code (which is general). Obstacles that occur in handling traffic accidents that cause death occur due to several factors, namely investigator personnel, witnesses, and the law itself.

5. References

Ruslan Renggong, 2016, *Special Criminal Law: Understanding Offenses Outside the Criminal Code*, Prenadamedia Group, Jakarta.