

Legal Review of Criminal Aspects in Traffic Scope

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Abstract: *The purpose of this research is to examine and analyze the nature of criminal aspects of traffic in national legal products. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. To overcome traffic accidents and other traffic problems, an effort is needed, one of which is by implementing effective criminal law enforcement against traffic violators, the hope is that the community can be more disciplined in traffic so that traffic peace is created. The implementation of criminal law enforcement against traffic violators is certainly different from the implementation of criminal law enforcement against perpetrators of other crimes. The implementation of criminal law enforcement against traffic violators also often cannot run effectively, this is influenced by various factors. The sanctions given to the perpetrators are not for the perpetrators to feel suffering but are intended to emphasize legal order, protect the legal community, so that road users are more obedient and compliant in traffic. Law Number 22 of 2009 has explained various provisions on punishment resulting from the impact of traffic law violations, such as the impact on accidents that result in minor or serious injuries and death.*

Keywords: *Analyze; Emphasize; Traffic.*

1. Introduction

Indonesia is a country whose control of government power is based on law. The 1945 Republic of Indonesia Law in Article 1 paragraph (3) has explained that Indonesia is a country of law which is contained in the welfare state concept, namely the government's obligation to carry out the State's mission, as stated in the fourth paragraph of the opening of the 1945 Constitution.¹

Law is basically regulatory, coercive and protective. However, the presence of law itself is a series that is implemented by and for the community so that the community can live in peace without any threat to themselves. Equality before the

¹Sumaryono and Sri Kusriyah, (2020), The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN.Bloro). Jurnal Daulat Hukum: 3 (1), March, p 237

law or Equal Justice Beneath the Law means "all humans are equal in the eyes of the law" or the principle where everyone is subject to the law in the same trial. Simply put, it means that all humans are equal and equal before the law. Equality before the law is one of the most important principles in modern law. It has become one of the pillars of the Rule of Law doctrine movement which has also spread to developing countries.²This system is a manifestation of the rule of law (rechtsstaat) so that it requires the presence of equal treatment for everyone before the law (equality of being equal to the law).³

Nowadays, traffic violations are the problem that causes most accidents and lack of legal awareness. Differences in the level of knowledge and understanding of the rules result in a gap that has the potential to cause problems in traffic, both between road users and between road users and officers tasked with enforcing the law on the highway.⁴

Traffic violations that occur routinely can cause the risk of accidents, material losses, injuries, and even loss of life. Road users with large numbers who often pass by on the highway every day can cause problems in traffic, one of which is traffic accidents. Traffic accidents are unlawful acts that are included as one of the elements of a criminal act. It can be seen that traffic accidents and traffic violations have different concepts but can be related to each other. Traffic violations can be interpreted as an action by drivers in driving a driving device, namely motorized or non-motorized vehicles, and pedestrians who violate existing and applicable traffic laws and regulations.

In legal norms, if a citizen commits a violation of legal provisions, the state has the right to impose sanctions in accordance with the laws and regulations that have been formulated, whether principal criminal sanctions, additional criminal sanctions or special criminal sanctions for crimes that have been regulated by law.⁵

Traffic violations are a criminal act. According to Moeljatno, a criminal act is "an act prohibited by law and subject to criminal penalties for anyone who violates it."⁶The imposition of sanctions on a person who commits a crime is not merely to make the perpetrator suffer, but according to Remmelink "is intended to uphold legal order, protect the legal community. The maintenance of social order is

²JM Walukow, (2013), The Realization of the Principle of Equality Before the Law for Prisoners in Correctional Institutions in Indonesia. *Lex et Societatis*, 1 (1). p 164

³Lilik Mulyadi, (2007), *Criminal Procedure Law*, Citra Aditya Bakti, Jakarta, p 20

⁴Bido Arsanu, Ahmad Yulianto Ihsan. (2022), *Law Enforcement Against Traffic Violators (Case Study at the East Java Regional Police Traffic Unit, Surabaya in 2022)*. *Journal of Legal Transparency*. 5 (2), p 87

⁵Chalisna Paristiana Putri, And Dian Esti Pratiwi. (2023). Effectiveness of Implementing Restorative Justice in Handling Traffic Accident Cases at the Surakarta City Police Resort. *Legal Standing Journal of Legal Studies*, 7 (2), p 234

⁶Muhamad Ainul Syamsu, (2016), *Criminal Sentencing & Two Basic Principles of Criminal Law*, Jakarta: Prenadamedia Group, p 15

largely dependent on coercion.⁷The law makers hope that with the criminal sanctions, road users will be more disciplined and orderly in driving.

In connection with this topic, to research it further and include it in legal research withThe purpose of the research is examine and analyze the nature of criminal aspects of traffic in national legal products.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Criminal Acts

The term criminal act in the Criminal Code is known as strafbaarfeit and in the literature on criminal law the term delict is often used, while lawmakers formulate a law using the term criminal event or criminal act or criminal act.⁸

According to Moeljatno, a criminal act is an act that is prohibited by a legal rule, the prohibition of which is accompanied by a threat (sanction) in the form of a certain penalty, for anyone who violates the prohibition. It can also be said that a criminal act is an act that is prohibited by a legal rule and is threatened with a penalty. As long as it is remembered that the prohibition is directed at the act (i.e. the condition or incident caused by the behavior of a person) while the threat of punishment is directed at the person who caused the incident.

Criminal acts are a basic concept in criminal law. Criminal acts are a legal concept, unlike the term evil deeds or crimes. In formal legal terms, criminal acts are a form of behavior that violates criminal law. Therefore, every act prohibited by law must be avoided and anyone who violates it will be subject to criminal penalties. So certain prohibitions and obligations that must be obeyed by every citizen must be included in laws and government regulations, both at the central and regional levels.

3.2. Traffic

Traffic is one of the means of public communication that plays a vital role in facilitating the development that we carry out. Because with the existence of traffic, it facilitates access for the community to carry out their activities to fulfill their economy. Without traffic, you can imagine how difficult it would be for us to

⁷Andi Hamzah, (2015), Indonesian Criminal Law & Its Development, Second Edition, Jakarta: PT. Sofmedia, p 36

⁸Andi Hamzah, (1994), Principles of Criminal Law, Rineka Cipta, Jakarta, p 72

get to work or do work related to the use of highways. There is not a single job that is free from the use of traffic.⁹

Traffic is a unified system consisting of road transportation, networks, infrastructure, vehicles, drivers, road users, and their managers. Traffic is a process or activity that occurs on the highway, the highway is one of the most important elements in the life together between communities. The road network system is divided into primary roads and secondary roads, the primary road system is used to provide services for the distribution of goods and services to develop all regions at the national level by connecting all distribution services that are tangible in activity centers, while the secondary road system provides services for the distribution of goods and services in urban areas. According to its function, roads can be grouped into arterial roads, local roads, environmental roads and collector roads. In addition, roads are also divided based on class where the division of road classes is useful for regulating the use and fulfillment of transportation needs.

3.3. The Nature of Criminal Aspects of Traffic in National Legal Products

Indonesia is a country of law which has been mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, in this case all actions of the community must be in accordance with the law. Likewise with the actions of the community on the highway which must be in accordance with the law as regulated in Law No. 22 of 2009 concerning Traffic and Road Transportation, of course every road user must understand every rule that has been standardized so that later there is one perception in every action and mindset when on the highway.

Traffic crimes are one of the acts of violation of the laws governing traffic. Violations committed can result in traffic accidents. Acts that originate from violations can result in harm to others or oneself.

The Criminal Code does not specifically regulate traffic crimes, but traffic crimes are regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation. There are 44 articles regarding traffic crimes, which are regulated in Chapter XX of Criminal Provisions starting from Article 273 to Article 317 of the Traffic and Road Transportation Law.¹⁰

Every act of the community that is contrary to and violates all provisions or regulations contained in Law No. 22 of 2009 concerning Traffic and Road Transportation is a criminal act of traffic violation. that a criminal act of violation is a criminal act that is known by the community that it is a criminal act because the law formulates the act as a crime and because the law also threatens the act with sanctions. This is clearly stated in the criminal provisions of Law No. 22 of 2009 concerning Traffic and Road Transportation, that anyone who violates the

⁹Umi Enggarsasi and Nur Khalimatus Sa'diyah, (2017), Study of the Factors Causing Traffic Accidents in Efforts to Improve Traffic Accident Prevention, Journal, 22 (3), p 2

¹⁰Maudy Aulia Putri, et al. (2021), Criminal Sanctions for Traffic Violations Resulting in the Loss of Life, Journal of Legal Construction, 2 (2), May, p 436

rules or commits an act that is contrary to the contents of the law can be given criminal sanctions in the form of fines, imprisonment, and even prison.

In general, there are seven groups in the structure of regulations regarding traffic and road transportation regulated in Law No. 22 of 2009 concerning Traffic and Road Transportation, namely: (1) Regulations regarding Roads and Traffic; (2) Regulations regarding vehicles; (3) Regulations regarding drivers; (4) Regulations regarding the transportation industry; (5) Road user charges; (6) Sanctions for violators of traffic regulations; (7) Traffic standards.

Any act that is contrary to Law No. 22 of 2009 concerning Traffic and Road Transportation is a criminal act, therefore, like other legal norms, any form of violation committed certainly has legal consequences in the form of sanctions that will be given to violators of the law. The sanctions given can be in the form of administrative sanctions and criminal sanctions in the form of imprisonment, detention, and fines. There are differences in the imposition of sanctions between one violation and another, this is adjusted to the level of violation committed, the following are forms of traffic crimes based on Law No. 22 of 2009 concerning Traffic and Road Transportation, namely:

1. Using the road in a way that can obstruct, endanger traffic that can cause damage to the road, which act is regulated in Article 274 with a maximum prison sentence of 1 (one) year or a maximum fine of IDR 24,000,000.00 (twenty four million rupiah) for those who violate it.
2. Carrying out acts that result in disruption of the function of traffic signs, markings and others is contained in Article 275 with a maximum prison sentence of 1 (one) month or a maximum fine of IDR 250,000.00 (two hundred and fifty thousand rupiah).
3. Driving a public motor vehicle on a route without stopping at a terminal is punishable by Article 276 with a maximum prison sentence of 1 (one) month or a maximum fine of IDR 250,000.00 (two hundred and fifty thousand rupiah).
4. Driving a motor vehicle without equipment in the form of a spare tire, safety triangle, jack, wheel opener, and first aid for accidents and others is contained in Article 278 with a maximum prison sentence of 1 (one) month or a maximum fine of IDR 250,000.00 (two hundred and fifty thousand rupiah).
5. Driving a motor vehicle equipped with equipment that can disrupt traffic safety is punishable by a maximum of 2 (two) months imprisonment or a maximum fine of IDR 500,000.00 (five hundred thousand rupiah) in Article 279.
6. Driving a motor vehicle without a registration plate is stipulated in Article 280 and carries a maximum prison sentence of 2 (two) months or a maximum fine of IDR 500,000.00 (five hundred thousand rupiah).
7. Driving a motor vehicle without a driving license is punishable by Article 281 with a maximum prison sentence of 4 (four) months or a maximum fine of IDR 1,000,000.00 (one million rupiah).

8. Road users who do not obey orders given by POLRI officers are subject to Article 282 with a maximum prison sentence of 1 (one) month or a maximum fine of IDR 250,000.00 (two hundred and fifty thousand rupiah).
9. Driving a motor vehicle in an unreasonable manner and carrying out other activities, influenced by a situation and which can result in impaired concentration while driving on the road is contained in Article 283 with a maximum prison sentence of 3 (three) months or a maximum fine of IDR 750,000.00 (seven hundred and fifty thousand rupiah).
10. Driving a motor vehicle without prioritizing the safety of pedestrians or cyclists is punishable by a maximum of 2 (two) months imprisonment or a maximum fine of IDR 500,000.00 (five hundred thousand rupiah) in Article 284.
11. Driving a motor vehicle on a road that does not meet the technical and roadworthy requirements including rearview mirrors, horns, headlights, brake lights, reverse lights, vehicle body dimension limit lights, towing lights, direction indicators, light reflectors, speedometers, exhausts, tire tread depth, windshields, fenders, bumpers, couplings, attachments, or windshield wipers is contained in Article 285 with the penalty for users of two-wheeled vehicles being imprisonment for a maximum of 1 (one) month or a maximum fine of Rp. 250,000.00 (two hundred and fifty thousand rupiah) and for users of four-wheeled vehicles or more being imprisonment for a maximum of 2 (two) months or a maximum fine of Rp. 500,000.00 (five hundred thousand rupiah).
12. Driving a Motor Vehicle on the Road that is not equipped with a Motor Vehicle Registration Certificate or Motor Vehicle Test Certificate as stipulated by the Republic of Indonesia National Police is contained in Article 288 with a maximum prison sentence of 2 (two) months or a maximum fine of IDR 500,000.00 (five hundred thousand rupiah).
13. Driving a motor vehicle at a crossing between a railway and a road without stopping when the signal has sounded, the railway crossing has begun to close, and/or there are other signals is contained in Article 296 with a maximum prison sentence of 3 (three) months or a maximum fine of Rp. 750,000.00 (seven hundred and fifty thousand rupiah).
14. Driving a motor vehicle while racing on the road is contained in Article 297 with a maximum prison sentence of 1 (one) year or a maximum fine of IDR 3,000,000.00 (three million rupiah).

All forms of traffic violations certainly have criminal sanctions with different sizes according to the form of violation committed. These criminal sanctions are given in the hope of providing a deterrent effect on violators. Every form of traffic violation that occurs certainly has elements that are causal factors for the occurrence of the traffic violation. These elements can certainly affect traffic conditions, so that the purpose of Law No. 22 of 2009 concerning Traffic and Road Transportation cannot be achieved.

Criminal law recognizes 2 (two) forms of error, namely Intention or Dolus and Negligence or Culpa. Dolus in Dutch is called *opzet* in English it is called (intention) which in Indonesian can be interpreted as deliberate or intentional. First of all, it should be noted that the Criminal Code (KUHP) itself does not formulate what is meant by *opzet*. However, the understanding of *opzet* is very important, because it is used as an element of some criminal events in addition to events that have an element of culpa.¹¹

In the scope of traffic, there are criminal aspects stipulated in the Traffic and Road Transportation Law which regulate criminal liability for the form of culpa (negligence) and dolus (intentional) errors. In Law number 22 of 2009 concerning traffic and road transportation regulates issues related to traffic accidents resulting in minor injuries, serious injuries or fatalities that are implicated in the form of culpa (negligence) errors, namely in Article 310 which states that:

- 1) Every person driving a motorized vehicle who due to his negligence causes a traffic accident with damage to vehicles and/or goods shall be punished by imprisonment for a maximum of 6 (six) months and/or a fine of a maximum of IDR 1,000,000.00 (one million rupiah).
- 2) Every person who drives a motorized vehicle which due to his negligence causes a traffic accident with minor injuries and damage to the vehicle and/or goods shall be punished by imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of IDR 2,000,000.00 (two million rupiah)
- 3) Every person who drives a motorized vehicle which, due to his negligence, causes a traffic accident with serious injuries to the victim, shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum 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 penalty shall be imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 12,000,000.00 (twelve million rupiah).

Substantially, Law Number 22 of 2009 concerning road traffic and transportation regulates criminal provisions for legal subjects who commit wrongful acts dolus (intentionally) with the following elements:

- 1) Intentionally driving a motor vehicle in a manner or condition that endangers life or property is contained in Article 311 paragraph 1 with a maximum prison sentence of 1 (one) year or a maximum fine of IDR 3,000,000.00 (three million rupiah).
- 2) If the act of intentionally driving a Motor Vehicle in a manner or condition that endangers life or property then results in a Traffic Accident with damage to the Vehicle and/or property is regulated in Article 311 paragraph 2 with a

¹¹Teguh Prasetyo, (2011), *Criminal Law*, Rajawali Press, Jakarta, p 95-96.

maximum prison sentence of 2 (two) years or a maximum fine of IDR 4,000,000.00 (four million rupiah).

- 3) Intentionally driving a motor vehicle in a manner or condition that endangers life or property, resulting in a traffic accident with minor injuries and damage to the vehicle and/or property as stipulated in Article 311 paragraph 3, is punishable by imprisonment for a maximum of 4 (four) years or a maximum fine of IDR 8,000,000.00 (eight million rupiah).
- 4) Intentionally driving a motor vehicle in a manner or condition that endangers life or property, resulting in a traffic accident with serious injuries is contained in Article 311 paragraph 4 with a maximum prison sentence of 10 (ten) years or a maximum fine of IDR 20,000,000.00 (twenty million rupiah).
- 5) Intentionally driving a motor vehicle in a manner or condition that endangers life or property and then results in the death of another person, is stated in Article 311 paragraph 5 with a maximum prison sentence of 12 (twelve) years or a maximum fine of IDR 24,000,000.00 (twenty four million rupiah).
- 6) Driving a Motor Vehicle involved in a Traffic Accident and intentionally not stopping the vehicle, not providing assistance, or not reporting the Traffic Accident to the nearest Indonesian National Police without reason is contained in Article 312 with a maximum prison sentence of 3 (three) years or a maximum fine of IDR 75,000,000.00 (seventy five million rupiah).

The law aims to guarantee continuity and balance in social relations and as a protector of certain human interests, honor, freedom, life, property, and so on against things that are detrimental.¹²In addition, the existence of law is so that chaos does not occur in society, such as the creation of Law No. 22 of 2009 concerning Traffic and Road Transportation which is a law that regulates us in carrying out activities related to traffic and highways. In this law there are all regulations that contain orders or prohibitions in terms of traffic and road transportation.

4. Conclusion

Traffic crimes are one of the acts of violation of the laws governing traffic. Violations committed can result in traffic accidents. Acts that originate from violations can result in harm to others or oneself. The Criminal Code does not specifically regulate traffic crimes, but traffic crimes are regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation, matters concerning traffic crimes are as many as 44 articles, which are regulated in Chapter XX Criminal provisions ranging from Article 273 to Article 317 of the Traffic and Road Transportation Law.

¹²Teguh Prasetyo, (2018), Introduction to Legal Science, Depok, Rajawali Press, p 12

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