

Legal Review of Children as Perpetrators of The Criminal Act of Sexual Against Children (Case Study in Cirebon District Court)

Prasetya Nugrahaning Widi¹⁾ & Gunarto²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: prasetyanugrahaningwidi.std@unissula.ac.id

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

Abstract. *The police are authorized by law regarding traffic security. Traffic police or called Polantas are implementing elements tasked with carrying out police duties including guarding, regulating, escorting and patrolling, public education and traffic engineering, driver registration and identification, traffic accident investigation and law enforcement in the field of traffic in order to maintain security, order and smooth traffic. Traffic police must conduct investigations into traffic accident cases. The aim of this research is to find out and analyze (1) the implications of positive criminal law on traffic accidents, (2) the investigation scheme by the Traffic Police for traffic accidents with fatalities, (3) the obstacles faced by the Traffic Police in the process of investigating traffic accidents that result in fatalities. The approach method used in this study is sociological juridical. The specifications of this study are descriptive analytical. The data sources used are primary data 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. While secondary data is obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Based on the results of the research and discussion, it can be concluded: (1) In Article 229 of Law Number 22 of 2009 concerning Traffic and Road Transportation, traffic accidents are classified into three, namely minor traffic accidents, which are accidents that result in damage to vehicles and/or goods; moderate traffic accidents, which are accidents that result in minor injuries and damage to vehicles and/or goods; serious traffic accidents, which are accidents that result in victims dying or being seriously injured. (2) The Traffic Police Scheme in investigating traffic accidents that result in victims dying is to process reports/information; visit the Scene of the Crime; request for a Visum et Repertum and evidence in the case of accident victims who die or to take them to the hospital to carry out a Visum et Repertum or treatment by the Traffic Police with the support of operational Ambulance vehicles to speed up the evacuation process. (3) In the investigation process of the accident case, there are obstacles faced by the Police Traffic Unit, these obstacles include weak evidence. Strong evidence can be in the form of eyewitness statements, CCTV recordings, photos or videos of the incident, medical records, or other documents that can prove the perpetrator's involvement in*

the accident. However, if the evidence produced is not strong enough or too little, the court may not be able to consider the case.

Keywords: *Investigation; Traffic Police; Traffic Accidents.*

1. Introduction

The Republic of Indonesia is a country based on law. This is expressly stated in Article 1 paragraph (3) of the 1945 Constitution.¹The idea of a state based on law was built by developing the legal apparatus itself as a functional and just system and fostered by building a culture and legal awareness in community life.²So that all community activities must be based on the laws that apply in society. So the law cannot appear or arise if there is only one person. There must be 2 or more individuals (society) so that law is created. When the law is created and runs well, the law will create protection for society which will result in the realization of justice. A regulation is said to be good if it can apply legally, sociologically and philosophically, as well as regarding traffic regulations.

Traffic is a vital means, because it is directly related to transportation. Everyone who mobilizes, must utilize the existing means of transportation, both privately owned means and using public transportation. Many people want to get comfort in transportation. So that technological progress has become a demand. With technological advances in transportation, the development of traffic and road transportation has also increased. So that modernization occurs, such as in road infrastructure, transportation facilities and other traffic devices.

There are three types of transportation used to establish inter-regional relations, namely land transportation, sea transportation, and air transportation. One of the important and prominent sub-sectors is the land transportation sector, especially road traffic.³This is because most of the transportation flows use highway infrastructure. So it can be said that traffic has an important meaning for the development of society.

In Article 1 paragraph (2) of Law Number 22 of 2009 concerning Traffic and Road Transportation, traffic is defined as the movement of vehicles and people in road traffic space. Traffic space itself is infrastructure designated for the movement of vehicles, people and goods in the form of roads and supporting facilities.

The development of transportation technology in Indonesia has developed very advanced, both air, land, and sea transportation have become diverse. The development of transportation, especially land transportation has made it easier for people to move from one area to another, but on the other hand the development of transportation in big cities has given rise to various traffic problems such as traffic violations, congestion and traffic

¹Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, Jurnal Daulat Hukum, Volume 3 Number 1, March 2020, p 185

²Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, Jurnal Daulat Hukum, Vol 3 No 1, March 2020, p 180

³Hardiman, National Discipline Movement in Traffic from an Early Age, Graha Umbara, Jakarta, 2000, p. 20.

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accidents from time to time. Traffic and Road Transportation is a unified system that is interrelated consisting of Traffic, Road Transportation, Traffic Network, Vehicles, Drivers, Road Users, and its Management. Good and efficient traffic management is important to ensure that road transportation can move safely.

If described at least there are several points that must exist and be implemented in traffic, guarantee of traffic safety and smoothness, highway infrastructure, traffic and transportation that takes place economically, protection of the environment. It is capital to achieve order in traffic. Traffic problems are problems that cannot be separated from everyday life, because society is always in contact with traffic. This traffic problem is also inseparable from traffic accidents. Traffic accidents are an unintentional incident on the road involving vehicles with or without other road users, which results in human casualties or property losses.⁴

According to Pignataro⁵ Accidents can be caused by road user factors (drivers and pedestrians), vehicle factors and environmental factors. Pignataro also stated that accidents are caused by a combination of several factors, bad behavior from drivers or pedestrians, roads, vehicles, drivers or pedestrians, bad weather or poor visibility.

Law Number 22 of 2009 concerning Traffic and Road Transportation states that a traffic accident is an unexpected and unintentional event on the highway involving vehicles with or without other road users resulting in human casualties or property losses. Law Number 22 of 2009 concerning Traffic and Road Transportation, although it has been socialized, the number of accidents and traffic violations in Indonesia remains high, according to data from the Traffic Directorate of the Police Headquarters, the number of traffic accidents in Indonesia in 2022 reached 94,617 cases.⁶ Even according to the World Health Organization (abbreviated WHO), traffic accidents are the number 3 (three) killers for Indonesian people, after HIV/AIDS and TB (tuberculosis). In that year, the number of deaths in Indonesia due to traffic accidents had reached 19,054 people, meaning that in every 1 hour there are around 2-3 people or every day around 84 people die from traffic accidents. Nationally, as many as 67% of accident victims are of productive age (22-50 years). Losses from victims and material losses due to the accident are estimated to reach 134.6 billion.⁷

Types of traffic accidents are regulated in Article 229 of Law Number 22 of 2009 concerning Traffic and Road Transportation which classifies traffic accidents as follows: Minor traffic accidents, and Serious traffic accidents. Serious traffic accidents are accidents that result in fatalities and/or serious injuries. Serious injuries are those that result in the victim falling ill and having no hope of recovery at all or causing a mortal danger. Inability to continue to carry out job duties or work. Loss of one of the five senses, suffering from severe disability

⁴Tatang Sugandi, et al. Traffic Police Vademikum, Jakarta: Traffic Police Headquarters, 1999, p. 148.

⁵LJ Pignataro. Traffic Engineering: Theory & Practice. Prentice H.I. Englewood Cliffs. 2004, p. 41.

⁶Annisa Delviane, et al. Legal Analysis of the Termination Process of Investigation of Traffic Accident Perpetrators Resulting in Death (Karimun Police Research Study), QISTINA: Indonesian Multidisciplinary Journal, Vol. 2 No. 2 December 2023, p 1447

⁷Ibid

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or paralysis. Disturbed thinking for more than 4 (four) weeks, miscarriage or death of a person's pregnancy. Injuries that require hospital care for more than thirty days.⁸

When viewed from the incident or cause of the accident, traffic accidents can be categorized as single accidents, pedestrian accidents and vehicle turning accidents. Meanwhile, when viewed from the severity of the accident, traffic accidents can be classified as serious accidents (fatal), moderate (death and one seriously injured), minor (minor injuries), which cause material losses such as damage to vehicles and/or roads. Meanwhile, from the side of the accident victims, traffic accidents can be categorized as accidents that cause death (fatality killed), serious injury, and minor injury.

Accident cases are part of the criminal act of negligence/negligence mentioned in Article 359 of the Criminal Code. In Article 359 of the Criminal Code, it is emphasized in two ways that the death of another person is the result of the negligence of the perpetrator, namely by not mentioning the perpetrator but his mistake (negligence). In the situation of motor vehicle drivers, doing wrong and not doing wrong seem to be one act. Carelessness cannot be blamed if the perpetrator could not have done otherwise than what he did. In this case, it is important that the implementation knows to what extent the nature of carelessness can be imposed on the perpetrator.

Negligence is an act committed by someone carelessly that the perpetrator should have known the consequences. Negligence occurs due to carelessness and negligence of the perpetrator, therefore, the consequences that arise can be fatalities, injuries and damage to vehicles and public and private facilities. Likewise, negligence in driving motor vehicles often causes accidents that result in death, especially on the highway.

Traffic crime cases generally occur unintentionally, here there is only an element of negligence or carelessness. The imposition of criminal penalties on people who negligently commit crimes, means that there is a crime that at the time of the occurrence the mental state of a person does not know and has no intention at all to commit an act, however the perpetrator is still considered responsible for the occurrence of the prohibited case, even though he did not intend to commit an act that turned out to be a crime.

Law as a norm has special characteristics, namely to protect, regulate, and provide balance in maintaining public interests. Violation of legal provisions in the sense of harming, neglecting or disturbing the balance of public interests can cause reactions from the community. The reaction given is in the form of restoring balance for a social group which is regularly carried out by authorized officers by giving punishment. The provisions that apply to someone who neglects or disturbs the balance of public interests are legal provisions that apply in the life of the social group at that time, not past legal provisions that are no longer valid or that are being planned to be enacted. In other words, the applicable legal rules are positive law. Positive law which is often also called *ius constitutum* is the legal provisions that apply at a certain time, place, and time.

In general, the needs of every human being can be met, although not entirely, in circumstances that do not require pressure from within or from others. To meet urgent needs, it is usually often carried out without careful thought that can harm the environment

⁸Bermana Manda, Strategy for Determining Suspects in Serious Traffic Accidents by Investigators of the Agam Police Traffic Unit, *Unes Law Review*, Volume 3 Issue 3, March 2021, p 274

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or other humans. Such things will cause a negative effect that is not balanced with a good atmosphere and life. To return to a good atmosphere and life, accountability is needed from the perpetrator who created the imbalance. The accountability that must be carried out by the perpetrator is in the form of transferring the community's sense of discomfort. This is so that the suffering or loss experienced can also be felt. The giver of the delegation is carried out by an individual or group of people who are authorized to be a task given by the community to him. Meanwhile, for the recipient of the delegation in being responsible for his actions, the delegation is in the form of a punishment called "being criminalized". So, someone who is criminalized means that he is carrying out a punishment to be responsible for his actions which are considered less good and endanger the public interest.⁹

Investigations in traffic accidents need to be carried out because they are to find and collect evidence that with that evidence makes it clear about the traffic accident that occurred and to find suspects and other motives. Traffic accident investigations are carried out by investigators, investigators are officers of the Republic of Indonesia National Police or certain Civil Servants who are given special authority by law to conduct investigations.

In traffic accident investigations, the role of the police begins when they arrive at the scene of the crime, request a visum et repertum, and conduct an examination at the scene by summoning and confiscating evidence. The action stage is the investigation stage where legal actions that directly relate to human rights begin, namely in the form of restrictions or even violations of human rights. In this action stage, legal actions that can be taken are as regulated in Article 7 of the Criminal Procedure Code. If the investigation is carried out by a certain Civil Servant Investigator, then from the time the report or complaint is received, it is mandatory to notify the Police Investigator.¹⁰

It is stated in Article 7 paragraph (2) of Law Number 22 of 2009 that the main duties and functions of the Police in this case are organizing traffic as a government affair in the field of registration and identification of motor vehicles and drivers, law enforcement, operational management and traffic engineering as well as traffic education.¹¹

The researcher determines a theme and forms a title to be continued in conducting a scientific study in the form of systematic and fundamental research with the title: "THE INVESTIGATION SYSTEM BY THE TRAFFIC POLICE ON TRAFFIC ACCIDENTS CAUSING VICTIM DEATH (Research Study at the Batang Police Traffic Unit)".

2. Research Methods

The approach used in this study is sociological juridical. Sociological juridical is an approach based on binding norms or regulations, so that it is expected that from this approach it can be known how the law which is empirically a symptom of society can be studied as a causal variable that causes consequences in various aspects of social life. The type of sociological juridical research uses primary data, where the primary data is obtained directly from the source so that it is still raw data.

⁹R. Abdoel Djamali, Introduction to Indonesian Law, PT. Raja Grafindo Persada, 2012, p. 171

¹⁰Elizabeth Novita Putri Dewatayani Sarmento, et al. Implementation of Traffic Accident Criminal Investigations Causing the Death of Victims in the Jurisdiction of the Denpasar Police, Journal of Legal Interpretation, Vol. 3, No. 1, March 2022, p. 126

¹¹Rinto Raharjo, Orderly Traffic, Shafa Media, Yogyakarta, 2014, p. 7

3. Results and Discussion

3.1. Positive Criminal Law Implications for Traffic Accidents

The birth of a regulation is determined by the government and balanced with the cooperation of all parties in implementing the regulation, then there will be a hope that the birth of new crimes can be emphasized policies or efforts to combat crime are essentially an integral part of community protection. Meanwhile, law enforcement officers are the parties responsible for mobilizing or implementing the law properly when acts that harm the rights and interests of a person as a legal subject. Based on the nature of the state which has a function to protect and prosper its citizens, it is necessary to have a guarantee of protection from the government towards the community which must apply widely and well. The government has the goal of realizing safe, secure, fast, smooth, orderly, regular and efficient traffic and road transportation.

Traffic is one of the means of public communication that plays a vital role in facilitating the development that we carry out. Traffic problems are one of the national scale problems that develop in line with the development of society.¹²

Law Number 14 of 1992 concerning road traffic and transportation is the only legal product that regulates all aspects of traffic and transportation. Basically, this law is a renewal of the legal product left over from the Dutch Colonial Government in the 1930s which was adopted by the government in 1951 and renewed in 1965, then renewed again in 1992.

This law was prepared to accommodate various new developments, especially new concepts and technologies in traffic management and engineering. This law was then manifested into four Government Regulations (PP), namely: PP No. 41/1993 concerning Highway Transportation, PP No. 42/1993 concerning Motor Vehicle Inspection, PP No. 43/1993 concerning Highway Infrastructure and Traffic, and PP No. 44/1993 concerning Vehicles and Drivers. In line with these government regulations, various Ministerial Decrees were also issued as technical guidelines for the implementation of the various regulations above. Examples are: Kepmen No. 60/1993 concerning Road Markings, Kepmen No. 61/1993 concerning Road Signs, and Kepmen No. 62/1993 concerning Traffic Lights.

The law as a reference for regulating traffic activities and enforcing traffic violations with the enactment of Law Number 22 of 2009 concerning traffic and road transportation. Traffic is a system consisting of the first main components or a head way system (the time between two consecutive vehicles when passing a point on a road) covering all types of infrastructure and facilities from all types of existing transportation, namely: road networks, road accessories, road facilities, public and private transportation, and other types of vehicles that carry out the transportation process, namely moving people or materials from one place to another which is limited by a certain distance. Traffic in Law Number 22 of 2009 is defined as the movement of vehicles and people in road traffic space. Road traffic space is infrastructure intended for the movement of vehicles, people and/or goods in the form of roads and supporting facilities.

¹²Elfrida Ade Putri, Monograph: Traffic Law Enforcement and Road Transportation, Pena Persada, Banyumas, 2020, p. 1

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According to Muhammad Ali, traffic is walking, going back and forth, traveling on the road. Ramdlon Naning also describes the meaning of traffic, namely the movement of humans with or without a means of propulsion from one place to another.¹³ From the definition above, it can be concluded that traffic is a means of road that is the main means to achieve a certain goal that is accompanied or not accompanied by vehicles or goods transport. In traffic there are three important components, namely humans, vehicles and roads.

The meaning of traffic for road traffic describes road traffic violations as any action or deed that is contrary to the provisions of traffic laws. These violations are regulated in Law No. 22 of 2009:

- a. Behave in an orderly manner;
- b. Prevention of anything that may hinder or endanger the safety and security of road traffic or cause road damage.

Any violation of these provisions will be considered as an accident-related violation. Traffic order, on the other hand, is a kind of national discipline that reflects the culture of a country. Therefore, everyone must participate and realize so that there are no traffic violations. Thus, the community is expected to know, apply and obey traffic regulations when driving on the highway. Traffic characteristics arise from the interaction between drivers and the environment. Traffic on access roads changes its character based on area and time. Driver behavior also affects traffic. Drivers on road segments assembled for constant speeds, for example 80 km / h may have varying speeds of 30 km / h to 120 km / h.

To understand traffic violations in more detail, it is necessary to first explain the violation itself. In the Criminal Code (KUHP) criminal acts are divided into crimes (*misdrifve*) and violations (*overtredingen*). Regarding the crime itself in the Criminal Code, it is regulated in Book II, namely about Crimes. While violations are regulated in Book III, namely about Violations. In criminal law there are two views on the criteria for dividing criminal acts into crimes and violations, namely qualitative and quantitative.

According to a qualitative view, it is defined that an act is seen as a crime after there is a law that regulates it as a crime. While a crime is *recht delicten* which means something that is seen as an act that is contrary to justice, regardless of whether the act is threatened with a criminal penalty in a law or not. According to a qualitative view, the threat of a violation is lighter than a crime. According to JM Van Bemmelen in his book "*Handen Leer Boek Van Het Nederlandse Strafrecht*" states that the difference between these two groups of criminal acts (crimes and violations) is not qualitative, but only quantitative, namely that crimes are generally threatened with a heavier penalty than violations and it seems that this is based on the more severe nature of the crime.¹⁴

If the statement above is connected to the reality of everyday practice where the imposition of sanctions on perpetrators of crimes is generally heavier than the sanctions given to perpetrators of violations. To explain the meaning of violations, the opinions of legal scholars are needed. According to Wirjono Prodjodikoro¹⁵ The definition of a violation is

¹³Erly Pangestuti & Fajar Sulisty Wahyudi, Legal Settlement Procedures for Traffic Violations in the Criminal Code, *Journal of Law: Yustitiabelen*, Vol. 7 No. 1, July 2021, p 75

¹⁴Bambang Poernomo, *Principles of Criminal Law*. Jakarta: Ghalia Indonesia, 2002, p. 40

¹⁵Wirjono Prodjodikoro, *Principles of Criminal Law*. Bandung: Refika Aditama, 2003, p. 33

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"overtredingen" or a violation means an act that violates something and is related to the law, meaning nothing other than an unlawful act.¹⁶

Meanwhile, Bambang Poernomo stated that violations are political-on recht and crimes are crimineel-on recht.¹⁷ Politis-on recht is an act that does not obey the prohibitions or requirements determined by the state authorities. While crimineel-on recht is an act that is against the law.

From the various definitions of violations above, it can be concluded that the elements of violations are as follows:

- a. There are acts that are contrary to legislation;
- b. Causing legal consequences.

So from the various definitions above, it can be concluded that a violation is an act or action that is contrary to the provisions of laws and regulations. Based on the definition of violation and the definition of traffic above, it can be concluded that

What is meant by a traffic violation is an act or action carried out by a person driving a public vehicle or motorized vehicle or pedestrian which is contrary to applicable traffic laws and regulations.¹⁸

Traffic order is one of the manifestations of national discipline which is a reflection of the nation's culture, therefore every human being must participate in realizing it. To avoid traffic violations, it is expected that the community can know and implement and obey the traffic regulations on the highway.¹⁹

The practical mindset of the community in driving on the highway has given birth to an instant society both when driving and outside of driving. This instant society then encourages the erosion of ethics in driving on the highway, and causes various kinds of traffic violations. Violation is a criminal act that is not as serious as a crime. Meanwhile, according to the big Indonesian dictionary, a violation is an act or case of violating, a criminal act that is lighter than a crime.²⁰

There are many factors that influence the occurrence of traffic violations on the road every year. These factors include the paradigm of instant society in modern times, the fading sensitivity in driving, and the lack of driving ethics to be orderly, respect each other, and appreciate each other, resulting in the erosion of the sense of ownership of something. The above factors have a causal relationship or cause and effect that are interrelated with each other. These factors can be simplified into 3 main factors causing traffic violations, namely human factors, vehicle factors (motorcycles), and road condition factors.²¹

According to Suwardjoko, the recording of traffic violation and accident data in Indonesia is not yet complete enough to be analyzed to find the causes of traffic accidents so that appropriate efforts can be made to overcome them. The causes of accidents can be grouped

¹⁶Ibid, p 37

¹⁷Bambang Poernomo, Principles of Criminal Law. Jakarta: Ghalia Indonesia, 2002, p. 43

¹⁸Ramdlon Naning, Stimulating Legal Awareness and Discipline of Law Enforcers in Traffic, Surabaya, Bina Ilmu, 1983, p. 87

¹⁹Ibid, p 88

²⁰Adiputra, PB Traffic Law and Ethics. Bandung: Citra Aditya Bakti. 2002, p 103

²¹Ibid, p. 104

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into three elements, namely humans, roads, and vehicles. According to Suwardjoko, it is not an exaggeration to say that almost all traffic violations and accidents are mainly caused by drivers. The causes of traffic violations and accidents are also emphasized by Hobbs' statement, that the causes of traffic violations and accidents are mostly caused by humans, which include human psychology, sensory systems such as sight and hearing, and knowledge of traffic procedures.²²

The human factor is the most dominant factor in accidents. Almost all accidents are preceded by violations of traffic signs. Violations can occur due to deliberate violations, ignorance of the meaning of applicable rules or not seeing the provisions in force or pretending not to know. The most common vehicle factors are flat tires, brakes not functioning as they should, metal fatigue resulting in broken vehicle parts, equipment that should have been replaced but was not replaced and various other causes. All vehicle factors are closely related to the technology used, maintenance carried out on the vehicle. For vehicle factors, vehicle maintenance and repair are essential, in addition to the obligation to carry out regular motor vehicle testing.²³

The last factor is the road factor, this is related to the speed of the road plan, safety fences in mountainous areas, the presence or absence of road media, and visibility and road surface conditions. Damaged or potholed roads are very dangerous for road users, especially for motorcyclists. Rain also affects vehicle performance such as braking distances becoming further and roads becoming more slippery. In addition, visibility is also disturbed by smoke and fog, especially in mountainous areas. This results in shorter visibility.

Road factors are also emphasized by Suwardjoko's statement, that road conditions can be one of the causes of traffic violations and accidents such as damaged roads, sharp bends in the road, but road factors can be reduced by road engineering in such a way that it can influence the behavior of road users and reduce or prevent actions that endanger traffic safety.

3.2. Investigation Scheme by Traffic Police for Traffic Accidents with Fatalities

The Criminal Procedure Code defines investigation as a series of actions by investigators in the manner and according to the methods regulated in this law to seek and collect evidence with which to shed light on the crime that has occurred and to find the suspect.

As explained in the discussion of general provisions, Article 1 points 1 and 2, formulate the definition of investigation which states that investigators are Polri officials or "certain" civil servants who are given special authority by law. While investigation means; a series of actions carried out by investigative officials in accordance with the methods regulated by law to search for and collect evidence, and with that evidence to make or become clear the crime that occurred and at the same time find the suspect or perpetrator of the crime.²⁴

In the investigation action, the emphasis is placed on the action of "searching" and finding an event that is considered or suspected to be a crime. In the investigation, the emphasis is placed on the action of "searching and collecting evidence" so that the crime found can be

²²Christine ST Kansil. Traffic Discipline on Highways, 1st Edition, Jakarta: Rineka Cipta, 1995, p 85

²³A. Putri, Traffic Discipline in Teenage Motorcyclists Reviewed from Self-Safety Motivation and Gender. Phronesia Journal, Vol 2 No 6, 2011, p 118

²⁴M. Yahya Harahap, Op.Cit, 2006, p. 109

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clarified, and so that funds can be found to determine the perpetrator. From the explanation in question, there is almost no difference in meaning between the two. It is only gradual. Between investigation and inquiry are two phases of action that are in the form of one. Between the two are interrelated and complementary in order to complete the examination of a criminal event. However, viewed from several aspects, there are differences between the two actions:

1) In terms of implementing officials, investigative officials consist of "all members" of the Indonesian National Police. And basically the rank and authority are under the supervision of investigators.

2) His authority is very limited, only covering investigations or searching for and finding data on an action suspected of being a crime. Only in cases where an order has been received from an investigating officer, can the investigator carry out the actions referred to in Article 5 paragraph (1) letter b (arrest, prohibition of leaving a place, search of a place, search, confiscation, and so on).

The Criminal Procedure Code defines investigators as officers of the Republic of Indonesia's national police or certain civil servants who are given special authority by law to conduct investigations. This is then further emphasized and detailed in Article 6 of the Criminal Procedure Code. In addition to what is regulated in Article 1 point 1 and Article 6, there is also Article 10 which regulates the existence of assistant investigators in addition to investigators whose appointment is based on certain rank requirements.²⁵

1) Investigators as referred to in Article 7 of the Criminal Procedure Code are explained that: Investigators as referred to in Article 6 paragraph (1) letter a, due to their obligations, have the authority to:

2) Investigators as referred to in Article 6 paragraph (1) letter b have authority in accordance with the law which is the legal basis for each of them and in carrying out their duties are under the coordination and supervision of the investigators referred to in Article 6 paragraph (1) letter a.

Djisman Samosir argues that investigation is an effort to enforce the law that is restrictive and enforces the rights of citizens, the purpose of which is none other than to create a balance between individuals and public interests in order to create a safe and orderly situation, therefore investigation is an enforcement of criminal law, so that investigation must be carried out in accordance with the provisions of applicable laws and regulations. Meanwhile, according to De Pinto, investigating or opsporing is the beginning of an examination carried out by law enforcement officers appointed by law, after they hear news that a violation of the law has occurred.²⁶

Talking about investigation is nothing other than discussing the problem of investigating crimes or violations, the British usually call it "criminal investigation". The purpose of the investigation is to identify who has committed the crime and provide evidence regarding the problems that have been committed. To achieve this purpose, investigators will collect information with certain facts or events.

²⁵Ibid. p 110

²⁶Lilik Mulyadi, Op.Cit, 2012, p. 37.

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The legal basis for the Indonesian National Police in carrying out investigations into criminal acts is based on Law Number 2 of 2002 concerning the Indonesian National Police (hereinafter referred to as the Police Law); Article 14 paragraph (1) letter g "In carrying out the main tasks as referred to in Article 13, the Indonesian National Police is tasked with "conducting investigations and inquiries into all criminal acts in accordance with criminal procedure law and other laws and regulations". Article 16 paragraph (2) letter l of the Police Law states that the Indonesian National Police has the authority to carry out other actions according to the law for which they are responsible.

Article 2 of Law Number 2 of 2002 states that the Police are one of the functions of the State Government in the field of maintaining public security and order, law enforcement, protection, shelter, and service to the community". The Police also play a role as a leading institution in law enforcement efforts and have the authority to conduct a series of investigations, searches, arrests, examinations and refer cases to the Prosecutor's Office to be tried in court.²⁷

Momo Kelana, said that the term police has two meanings. First, the police in the formal sense which includes the organization and position of a police agency. Second, the police in the material sense which provides answers to questions of duties and authority in dealing with disturbances of order and security based on laws and regulations.²⁸ The police are a state tool tasked with maintaining security, providing protection and creating public order. The police function to maintain security, protection and peace in community life. Without the police, criminal law regulations would just be a series of dead written norms. The work of a police officer is also humanitarian work with very broad dimensions. In carrying out their duties, the police cannot only hide behind the provisions of the duties they must carry out, but are also expected to address the issue of how those duties are carried out.²⁹

The function of the Republic of Indonesia National Police in matters related to Traffic and Road Transportation is mandated by Law Number 2 of 2002 concerning the Republic of Indonesia National Police and Law Number 22 of 2009 concerning Traffic and Road Transportation to provide security, safety, order and smoothness for the public in traffic on the road so that the public is free from the threat of disruption in carrying out activities on the road in order to improve their quality of life.

The scope of the Polri function in traffic has a special unit in handling law enforcement in the traffic sector which is the task and function of the Polri Traffic Unit which is also called Polantas (Traffic Police). The traffic police are implementing elements tasked with carrying out police duties including guarding, regulating, escorting and patrolling, public education and traffic engineering, registration and identification of drivers or motor vehicles, investigation of traffic accidents and law enforcement in the field of traffic in order to maintain security, order and smooth traffic.

²⁷Annisa Delviane, et al. Legal Analysis of the Termination Process of Investigation of Traffic Accident Perpetrators Resulting in Death (Research Study of Karimun Police), QISTINA: Indonesian Multidisciplinary Journal, Vol. 2 No. 2 December 2023, p 1451

²⁸Momo Kelana, Police Law Development in Indonesia: A Comparative Historical Study, PT.IK, Jakarta, 1972, p. 22.

²⁹Malik Abdul, Fostering Legal Awareness in the Field of Traffic, Jaya Abadi, Yogyakarta, 1981, p. 17.

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In substance, Article 359 of the Criminal Code is a general rule (*lex generalis*) for acts due to negligence/negligence that cause the death of another person. This article covers events reported in the mass media, such as playing with a firearm that accidentally goes off and hits another person and kills them, setting a trap for wild animals that is electrified but the person who gets caught is a human who dies from the electric shock, driving a car on the highway and being sleepy and not paying attention to the road so that it hits a pedestrian to death, and so on. Currently, for traffic accidents that cause or result in the death of another person, this has been regulated in a separate law, namely Law Number 22 of 2009 concerning Traffic and Road Transportation, in Article 310 paragraph (4). The provisions in Article 310 paragraph (4) of Law Number 22 of 2009 are special rules (*lex specialis*) to the general rules (*lex generalis*) in Article 359 of the Criminal Code.³⁰

Currently, specifically to regulate road traffic and transportation, there is a Law on Road Traffic and Transportation, namely Law Number 22 of 2009 which replaces Law Number 14 of 1992 which was previously in effect, in which the criminal threat for acts due to negligence/negligence resulting in death has been further increased, namely it is higher than the criminal threat in Article 359 of the Criminal Code.³¹ The elements of the crime under Article 359 of the Criminal Code are substantially:

1. Whoever
2. Due to his mistake (negligence)
3. Causing someone else to die

In 2009, Law Number 22 of 2009 concerning Traffic and Road Transportation was enacted. The law replaced Law Number 14 of 1992 concerning Traffic and Road Transportation that was previously in effect. The consideration to replace the old law, according to the section considering letter (d) of Law Number 22 of 2009, is "that Law Number 14 of 1992 concerning Traffic and Road Transportation is no longer in accordance with the current conditions, changes in the strategic environment, and needs of the implementation of Traffic and Road Transportation". The elements of the offense of Article 310 of the UULLAJ can be explained one by one as follows:

1. Each person
2. who drives a motor vehicle;
3. which due to his negligence;
4. causing traffic accidents
5. which results in the death of another person (victim dies)

The definition of a material crime, according to I Made Widnyana, is "if the criminal act referred to in a criminal law provision is formulated as an act that causes a certain consequence, without formulating the form of the act".³² For example, murder (Article 338

³⁰David Bonar Parlindungan, et al. Legal Review of Criminal Acts of Negligence in Traffic Accidents Causing the Death of Others According to Law Number 22 of 2009 concerning Traffic and Road Transportation, *Lex et Societatis*, Volume X Issue 4, October-December 2022, p 8

³¹Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

³²I Made Widnyana, *Principles of Criminal Law*, Fikahati Aneska, Jakarta, 2010. p. 39.

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of the Criminal Code) is defined as an act that results in the death of another person. The definition of a formal offense is "if the intended criminal act is defined as the purpose of the act, without considering the consequences caused by the act".³³For example, theft (Article 362 of the Criminal Code) is defined as an act that involves "taking goods".

Article 310 paragraph (4) of the Traffic and Road Transportation Law is formulated by requiring a certain consequence, namely "causing another person to die", so this crime will later become a crime that is completed with the occurrence of the consequence in the form of the death of the victim. By requiring a certain consequence, it also means that there must always be proof of a causal relationship between the act of driving a motor vehicle that causes a traffic accident and the consequence in the form of the death of another person.

Investigations into traffic accidents are a series of actions by investigators in matters and according to the methods regulated by law to seek and collect evidence that can shed light on the traffic accident that occurred and to find the suspect.³⁴

In the context of investigating or investigating criminal acts of traffic accidents, the Traffic Unit conducts general observations, which include observations of road conditions (narrow/wide/ascent/descent/bend/intersection/straight and others), environmental conditions (busy/quiet/clear view and others), weather conditions at the time of the traffic accident, vehicles involved in the traffic accident, damage to vehicles, damage to the road and its equipment, the location of vehicles and victims, traces of collisions left on the road such as; brake marks, broken glass, drops of blood, paint/putty marks, oil marks, loose/fallen spare parts and others and the direction of the vehicle involved in the accident.³⁵

In handling the investigation, the police are required to secure the suspect and provide protection if there is a judgment against the suspect, after securing the suspect, the police are required to ask questions to the suspect regarding the chronology of the accident. After feeling sufficient in asking questions to the suspect, the police will file and conduct an investigation at the scene of the crime by taking pictures, consisting of photos of the overall situation, photos of the position of the vehicle involved in the accident, photos of the victim before being moved from the scene, photos of damage to the vehicle involved in the traffic accident and photos of the traces left behind.³⁶

In a traffic accident, it certainly involves one or more vehicles, each driven by a driver. Those involved in a traffic accident must of course be able to be held responsible for all their actions and all the consequences caused by the incident.

According to Moeljatno, there is a legal principle that states "There is no punishment if there is no error".³⁷This principle is not mentioned in written law but exists in unwritten law

³³Ibid

³⁴Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

³⁵Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

³⁶Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

³⁷Moeljatno, Principles of Criminal Law, Publisher Rineka Cipta, Jakarta, 1993, p. 153.

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which is recognized in Indonesia. So a person cannot be blamed or sentenced to a criminal penalty if it is not preceded by a guilty act committed by him.

In the explanation of Article 44 of the Criminal Code it is stated:

- a. Imperfect intellect. What is meant by the word "intellect" here is the power of thought, intelligence or thinking power. So imperfect intellect for example: idiot, deaf and mute since birth.
- b. Examples of illnesses that change one's mind include: insanity, epilepsy and various other mental illnesses.
- c. According to A. Ridwan Halim, he also stated: the perpetrator cannot be held responsible for his actions if the perpetrator: (1) Suffers from a mental illness or has changed his mind. (2) His mental growth is imperfect or abnormal (idiot).³⁸

The reason that exempts the people referred to in Article 44 of the Criminal Code from criminal responsibility is that they cannot anticipate or assess the consequences of their actions so that they generally do these actions outside of their awareness. That is why people like this are considered unable to be responsible for their actions. So the relationship between the ability to be responsible in traffic accidents is: as long as the perpetrators in the crime of traffic accidents are not crazy, idiots, or have lost their memory, then they can be held legally responsible for their actions. In the criminal law group, the legal subject in criminal law is a person. In this case, a person who is legally able to be responsible for the actions he does. As long as he is not crazy, not an idiot, then he has the opportunity to become a legal subject who will later receive legal sanctions according to the applicable law.³⁹

In relation to traffic accidents, several possibilities will arise as follows:

- a. In a traffic accident involving two motor vehicles where one of them dies, there will be one legal subject who is still alive.
- b. If three motor vehicles are involved and result in one person dying among the three, then there will be two people still alive who have the potential to become legal subjects.
- c. If in point 2 above it turns out that one person dies but the person who died was not one of the drivers but a passenger of one of the vehicles, then there will be three drivers who have the potential to become legal subjects.⁴⁰

Seeing the possibilities that occur as mentioned above, how do we determine the legal subject in a traffic accident, where the victim dies, as stated by AKP Ahmad Zainurrozaq that the correct traffic procedures are regulated from Article 52 to Article 87 of Law Number 22 of 2009, including: Regulating the use of road lanes, traffic movements, procedures for passing, procedures for passing, procedures for turning, procedures for slowing down vehicles, the position of vehicles on the road, the distance between

vehicles, primary rights at intersections. The first priority of road use for smooth traffic flow, stopping and parking, use of supporting components and motor vehicle equipment.

³⁸Ridwan Halim, *Criminal Law in Questions and Answers*, Ghalia Indonesia, Jakarta, 1995, p. 63.

³⁹Lilik Mulyadi, *Judge's Decision in Criminal Procedure Law*, PT Citra Aditya Bakti, Bandung, 2007, p. 126.

⁴⁰Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

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Warnings with sound and use of lights, herding animals and use of non-motorized vehicles, maximum and minimum speeds, determination of the heaviest load and prohibition of road use. Therefore, it is very important for Traffic Unit investigators to master the rules contained in Articles 54 to 87 of Law Number 22 of 2009 to determine which of the drivers involved has committed a violation that resulted in the accident and resulted in death. Therefore, to determine the legal subject in a traffic accident, it is necessary to understand the following:

- a. That traffic accidents are caused by one or more violations.
- b. Traffic violations can be violations of traffic behavior committed by a person.
- c. Traffic violations can be in the form of violations of the technical requirements of motor vehicles (roadworthiness).⁴¹

If the National Police investigator handling the traffic accident incident turns out that the results of the investigation at the scene of the crime, followed by the collection of evidence, witness statements and the results of his observations at the scene conclude that person A has committed a violation of the correct traffic procedures which ultimately resulted in the traffic accident, then the investigator will conclude that he is the legal subject or the defendant in the incident.

In a traffic accident that results in death, the following possibilities will arise:

- a. Possibility I is carelessness or the cause of the accident is caused by the victim who died, referred to as (Defendant victim).
- b. Possibility II: carelessness or the cause of the accident lies with the surviving driver.⁴²

In its meaning it means due to carelessness, negligence, negligence. So whoever is careless or negligent in traffic is the legal subject or the Defendant. So the choice of the Defendant can be directed to the deceased or to the living.

The element of fault in Article 359 of the Criminal Code is not enough to be interpreted as mere unintentional (*culpa*) but in addition to being unintentional it must also be accompanied by a lack of caution or negligence from a person. Therefore, a person who has a traffic accident where his opponent dies even though the person did not intentionally cause his opponent to die as long as he was careful, there was no negligence or carelessness and in fact the cause of the accident or the lack of caution was on the part of the deceased, then the person who is alive cannot be punished for violating Article 359 of the Criminal Code. Because he did not violate the 2nd element of the article, namely the element of fault. In fact, the lack of caution was on the part of the victim who died.⁴³

In traffic accidents, not all perpetrators who are still alive in a traffic accident that results in death can be punished according to Article 359 of the Criminal Code. Because the element of fault in the article could be on the deceased. In this case, the file is still submitted, but to

⁴¹Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

⁴²Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

⁴³Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

lighten the suspect's burden, a peace statement letter from both parties is attached. Not all carelessness or negligence is on those who are still alive. So many people think that if they are involved in a traffic accident and their opponent dies, they will definitely be sentenced to prison. In fact, not all of them are like that, it must first be proven who the element of carelessness is on. Is the negligence on the surviving perpetrator or the negligence on the deceased.⁴⁴ There are two possibilities in a traffic accident resulting in death, namely the legal subject is the perpetrator who is still alive and the legal subject is the perpetrator who died. In the investigation process, it refers to the applicable laws and regulations with the final outcome of the investigation which is also certainly different.

Whether or not the law is applicable in society, whether or not traffic regulations are effective based on Law Number 22 of 2009 concerning Traffic and Road Transportation, for those seeking justice in the midst of social life is a series of statements related to the legal principle itself. The legal principle is formed based on the will of the community together for orderly traffic, therefore all of that depends on the awareness of the community itself. So the purpose of the problem of legal awareness is intended as an awareness that arises in itself, and not the influence or coercion of others based on an assessment that originates from the soul of the community itself in a humane manner and not coercion, and this can be taken as an example: the use of "seat belts", it must be understood that by using "seat belts", is for one's own safety, if an accident occurs then it will be possible to avoid more severe consequences.⁴⁵

The dynamics of traffic law enforcement with the Police Traffic Unit investigation scheme for traffic accidents with fatalities with the optimization of the legal process in accordance with the relevant legal mechanisms and internal regulations of the agency that determine the technical investigation of traffic accidents as a form of law enforcement based on positive law. In the theory of positivistic law enforcement, the law provides something certain because it is to regulate the public. This legal certainty is justiciable protection against arbitrary actions. Second, because the law is for humans, its implementation must benefit the community. The law is general, binding, and equal, so enforcement should be fair. If only one element is considered, then the other elements will be sacrificed. Therefore, these three elements must be considered to be balanced.⁴⁶

The assertiveness of legal positivism to eliminate the requirement of connectivity between law and morality makes the axiological realm of this school of thought limited to achieving legal certainty. The essence of legal certainty is predictability, namely the ability to perceive "an individual ought to behave in a certain way" The axiological aspect fought for by legal positivism is legal certainty. By taking the formal legal source of law in the form of statutory regulations, it is believed that this can be realized. The principle of legality is the spirit of the pursuit of legal certainty. This principle was formulated by Von Feuerbac in the adage "No punishment without law, no punishment without crime, no crime without punishment" (nulla poena sine lege, nulla poena sine crimine, nullum crimen sine poena) This principle is so dominant, especially in the criminal law arena, that in many codifications it is included in

⁴⁴Results of the Interview with AKP Ahmad Zainurrozaq, as Head of the Batang Police Traffic Unit, Held on January 29, 2025

⁴⁵Soejono Soekanto, Introduction to the Sociology of Law, CV. Rajawali, Jakarta, 2009, p. 92.

⁴⁶Sudikno Mertokusumo, Op.Cit, 2010, p. 208

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the first article. That is why, the prohibition of retroactivity and the determination of analogy are strongly emphasized in the traditional concept of legal positivism.⁴⁷

4. Conclusion

1. Regarding the criminal aspect in a traffic accident incident, criminal law refers to it as criminal liability attached to the legal subject based on the results of the traffic accident investigation by fulfilling the criminal elements for the accident incident. The parameters and criteria that the incident can be enforced as a crime. In Article 229 of Law Number 22 of 2009 concerning Traffic and Road Transportation, traffic accidents are classified into 3, namely (1) Minor Traffic Accidents, are accidents that result in damage to vehicles and/or goods; (2) Moderate Traffic Accidents, are accidents that result in minor injuries and damage to vehicles and/or goods. (3) Serious Traffic Accidents, are accidents that result in victims dying or being seriously injured. The punishment that can be imposed on an accident incident for a driver due to negligence is a criminal sanction as regulated in Article 310 paragraph 1 of the LLAJ Law, which states "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. The duties and authorities of the Traffic Police in enforcing the law against drivers related to negligence that causes another person to die are to conduct investigations and inquiries, this is because the crime of culpa or negligence itself is a crime regulated in Articles 359 and 360 of the Criminal Code, moreover specifically regulated in Article 310 of Law Number 22 of 2009 concerning Traffic and Road Transportation, namely because negligence causes another person to die. The Traffic Police scheme in investigating traffic accidents that cause fatalities is (1) processing reports/information; (2) visiting the Scene of the Crime, namely by making observations, collecting evidence; and conducting documentation. Furthermore, observations consist of general observations regarding the traffic accident situation; and special observations regarding the conditions involved in the traffic accident; (3) requests for Visum et Repertum and evidence in the case of accident victims who die or to take them to the hospital to carry out Visum et Repertum or treatment by the Traffic Police with the support of operational Ambulance vehicles to speed up the evacuation process; (4) making a Minutes of Examination at the TKP; (5) Investigations into traffic accidents in which investigators assess the results of the crime scene investigation to determine whether or not there are elements of a criminal act in the traffic accident as a basis for conducting an investigation. Investigators conduct investigations into traffic accidents if there is sufficient evidence or the elements of a criminal act are fulfilled. Conversely, investigators terminate investigations into traffic accidents if there is insufficient evidence or it is not a criminal act or is void by law. 3. Traffic accident investigation is not as easy as expected, because it is a sudden event without knowing when the traffic accident occurred which resulted in the victim's death. In the process of investigating the accident case, there are obstacles faced by the Police Traffic Unit, these obstacles include: (1) Insufficient evidence, Strong evidence can be in the form of eyewitness statements, CCTV recordings, photos or videos of the incident, medical records, or other documents that can prove the perpetrator's involvement in the

⁴⁷Pratama Herry Herlambang. Op.Cit, October 2019, p. 107

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accident. However, if the evidence produced is not strong enough or too little, the court may not be able to consider the case; (2) Lack of witnesses, the accident occurred in a quiet place or not many people saw it. In conditions like this, it is difficult to find witnesses who can provide information about the accident; (3) The identification process is constrained, in traffic accidents involving many vehicles, such as accidents involving several cars or large vehicles, identification of the drivers involved can be difficult because of the many vehicles involved in the accident; (4) Cost and time, Time-consuming investigations: Traffic accident case investigations can be time-consuming because they require evidence collection, witness statements, and forensic analysis. This process can take days or even weeks depending on the complexity and scale of the accident.

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