

## Application of Criminal Law Towards Negligent Drivers in Traffic Accidents

Faundra Eka Pradita<sup>1)</sup> & Arpangi<sup>2)</sup>

<sup>1)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [faundraekapradita.std@unissula.ac.id](mailto:faundraekapradita.std@unissula.ac.id)

<sup>2)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [arpangi@unissula.ac.id](mailto:arpangi@unissula.ac.id)

**Abstract.** *The purpose of this study is to determine and analyze the application of criminal law against negligent drivers in traffic accidents in the jurisdiction of the Batang Police which causes the loss of life of another person, and a positive criminal law review of decision Number 144/Pid.Sus/2024/PN Btg criminal acts of negligence which cause the loss of life of another person. This study uses a normative legal approach method, with analytical descriptive research specifications. The data used are secondary data obtained through literature studies and primary data obtained at the Batang Police Resort. The formulation of the problem is analyzed with the theory of law enforcement and Criminal Responsibility in Islam. The results of this study are that traffic accidents due to driver negligence in the jurisdiction of the Batang Police show an increasing trend and require serious handling through a legal approach. The application of criminal law to perpetrators of negligence has been regulated in Article 359 of the Criminal Code and Article 310 paragraph (4) of Law No. 22 of 2009 concerning Traffic and Road Transportation, which regulates criminal sanctions for negligence causing death. From an Islamic legal perspective, this act is classified as jarimah khatha' (murder by mistake), with consequences of diyat and kafarat as a form of moral and legal responsibility. The main factors causing accidents include human error (such as fatigue and lack of focus), road conditions, and vehicles that are not roadworthy.*

**Keywords:** Accidents; Criminal; Driver; Negligence.

### 1. Introduction

Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a country of law. This means that the Indonesian state in carrying out its national and state life must be in accordance with applicable legal regulations. The Indonesian state also guarantees that every citizen has the same position before the law and

government without exception as stated in Article 27 paragraph (1) of the fourth amendment to the 1945 Constitution. Thus, it is only natural that the enforcement of justice based on law is carried out by every citizen, every state administrator, every community institution including the military.

As time progresses, more and more means of transportation are needed to meet needs. Traffic is one of the means of society that plays a vital role in facilitating the development that is carried out. Traffic problems are one of the national scale problems that develop in line with the development of society. The development of means of transportation over time does not decrease but rather increases, especially with the addition of various methods, forms and their respective advantages. However, the increase in the number of transportation is not balanced by the condition of the roads that both as well as public awareness of the legal rules in driving or the lack of effectiveness of applicable laws.

The accident case that the author made the topic in writing the thesis is an accident case that occurred on the KM 376 + 200 Toll Road, lane A Batang - Semarang, which is in the Ketangan Village area, Grinsing District, Batang Regency on Thursday, May 23, 2024 at around 04.30 WIB with the convict Dwi Oktiawan Putra Prasetya who was driving a Toyota Inova Venturer motor vehicle No. Pol B-777-FIE carrying two passengers, Zarghifari sitting in the front seat of the car and Doni Alifsyahrin sitting in the middle seat of the car, namely driving from west to east in the right lane through a straight road, flat, good concrete road, sunny weather and quiet traffic flow and suddenly the defendant fell asleep for a moment (microsleep) and the vehicle being driven was not controlled so that it hit the back of the Hino Tronton Truck motor vehicle No. Pol BE-9805-AH which was traveling in front of the left lane and the car driven by the defendant hit the truck body and stopped.

Due to the negligence of the defendant Dwi Oktaviawan Putra Prasetya, Zarghifari, who was sitting in the front left seat, died, while Doni Alifsyahrin suffered injuries.

## **2. Research Methods**

This research is a scientific activity that seeks to obtain a solution to a problem. Research as a means of developing science aims to reveal the truth systematically, analytically and constructively to the data that has been collected and processed.<sup>1</sup> Matters related to the research method in this study are as follows: The approach method used in this research is the method normative legal approach. Normative legal research is research that places law as a building of normative systems. The normative system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines

---

<sup>1</sup>Soemitro, Ronny Hanitijo, 2001, Legal Research Methods and Jurimetrics. Ghalia Indonesia, Jakarta, p. 44.

(teachings).<sup>2</sup> The research specification applied in this writing is empirical normative legal research, namely research that provides an understanding of the problems of norms experienced by dogmatic legal science in its activities of describing legal norms, formulating legal norms (forming laws and regulations), and enforcing legal norms (judicial practice).<sup>3</sup> The empirical normative legal approach is a combination of the normative legal approach with the addition of various empirical elements. The empirical normative research method concerns the implementation of normative legal provisions (statutes) in action on each specific legal event that occurs in a society.

### 3. Results and Discussion

#### 3.1. Implementation of Criminal Law Against Negligent Drivers in Traffic Accidents in the Batang Police Jurisdiction that Causes the Loss of Other People's Lives

##### 1) Implementation of Criminal Law Against Negligent Drivers in Traffic Accidents

According to the Law Traffic and Road Transport, a traffic accident is "an unexpected and unintentional event on the road involving vehicles with or without other road users that results in casualties and/or property damage. According to Article 229 of Law Number 22 of 2009 concerning Traffic and Road Transportation classifies the types of accidents, that is:<sup>4</sup>

(1) Accidents are classified as:

- a. Minor traffic accident
- b. Moderate traffic accident
- c. Serious traffic accident

(2) Minor traffic accidents as referred to in paragraph (1) letter a are accidents that result in damage to vehicles and/or goods.

(3) Moderate traffic accidents as referred to in paragraph (1) letter b are accidents that result in minor injuries and damage to vehicles and/or goods.

(4) Serious traffic accidents as referred to in paragraph (1) letter c are accidents that result in death or serious injury.

---

<sup>2</sup> Soerjono Soekanto & Sri Mamudji, 2007, Normative Legal Research: A Brief Review, Radjagrafindo, Jakarta, p. 7.

<sup>3</sup> I Made Pasek Diantha, 2016, Normative Legal Research Methodology in Justification of Legal Theory, Prenada Media Group, Jakarta, p. 84.

<sup>4</sup> Article 229 of Law Number 22 of 2009 concerning Traffic and Road Transportation

(5) Traffic accidents as referred to in paragraph (1) can be caused by negligence of road users, unroadworthiness of vehicles, and unroadworthiness and/or the environment.

In this case, it is related to traffic accidents caused by negligence that result in the death of the victim, when viewed from positive law, Indonesia has various legal substances that regulate the settlement of such legal cases, both from the Criminal Code and the Traffic and Road Transportation Law.

In criminal law, negligence, error, carelessness, or negligence is called culpa. The meaning of culpa is "error in general", but in legal science it has a technical meaning, namely a kind of error by the perpetrator of a criminal act that is not as serious as intent, namely being less careful so that unintended consequences occur. In essence, culpa includes being less careful in thinking, less knowledge, or acting less directed. According to Jan Remmelink, the term culpa here clearly refers to a person's psychic abilities and therefore it can be said that culpa means not or less real in advance of the possibility of fatal consequences from the person's actions even though it is easy to do and therefore should be done.<sup>5</sup>

The provisions regarding negligence or negligence that causes the victim to die are regulated in the Criminal Code (KUHP) Book Two on Crimes, Chapter XXI, Article 359, which reads as follows: "Anyone who, due to negligence, causes the death of another person, shall be subject to a maximum prison sentence of 5 (five) years or a maximum imprisonment of 1 (one) year."

There is also Law no. 22 of 2009 concerning PastRoad Traffic and Transportation (LLAJ) Article 310, which reads as follows:

(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 5,000,000.00 (five million rupiah);

---

<sup>5</sup>Situmeang, Brian Antonius, Criminal Application of Traffic Accidents Involved by Children Causing Death, Dharmawangsa University, 2019

(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 by imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 12,000,000.00 (twelve million rupiah).

The legal regulations governing traffic accidents on the highway can cause material losses, some even to death in addition to serious and minor injuries and/or lifelong disabilities. Regulations on traffic accidents can be seen from several regulations on traffic itself and several applications contained in the criminal code. Sometimes the consequences of a criminal act are so severe that they harm someone's interests, such as the death of a person, that it is felt to be unfair, especially by the victim's heirs. In this case, the application of criminal law becomes a parameter of a value of justice that can be tested by the judge's decision on a traffic accident case that results in death.

Therefore, to avoid accidents due to someone's negligence, knowledge of the factors why negligence occurs that cause death needs to be known. Therefore, the author summarizes several factors that cause negligence as follows:

a. Human Error Factor

The very dynamic road conditions certainly cannot be avoided by people when driving. Human error in motorcyclists in this study was caused by aspects of recognition error and decision error. Aspects of negligence when identifying and observing conditions on the highway, unsupportive road environments, lack of knowledge in understanding problematic vehicles can lead to negligence when drivers are faced with situations beyond expectations. Negligence does not occur without a cause. One of the causes is the human error factor, namely negligence based on the results of interviews with the Police. The following are factors of human error when driving:

- 1) Fatigue Triggers of fatigue can be caused by 3 (three) aspects, namely the sleep aspect, whether the driver experiences a lack of sleep, fatigue due to excessive sleepiness, and short duration of sleep or more than 17 hours. Next is the activity aspect, whether the driver is active for a long duration so that there is no time to rest from the profession.
- 2) Drowsiness, Feelings of drowsiness and feeling like floating are often not recognized by drivers. This kind of drowsiness often causes drivers to go out of the driving lane which can endanger the lives of drivers and others.
- 3) Not Focused, The condition of the driver cannot respond quickly when facing an emergency situation around him. This condition can be influenced by many problems at work, household, and others.

b. Road Conditions

In this case, road conditions are also important to avoid accidents. Dark and potholed road conditions make it impossible for drivers to avoid accidents, which can lead to death.

c. Vehicle Factors

Although not as frequent as other aspects, problems with brakes suddenly not working are also common in drivers. The cause could be due to brake fluid running out or brake parts that have been damaged. The most important thing is in the canvas and brake piston parts. Other aspects such as the age of the vehicle. So it is necessary for drivers to carry out vehicle maintenance on time to avoid accidents caused by the driver's own condition.

It has been explained that there are main factors and indicator factors that cause accidents in the jurisdiction of the Batang Police, of course to make the jurisdiction of the Batang Police safer there must be firmness from law enforcement to regulate the roads. Therefore, criminal law enforcement actions need to be taken if there are any violations or negligence in operating vehicles on the highway. In fact, if as a road user you have entered the highway area, you must be ready to use the recommended attributes to protect and to reduce the number of accidents. The equipment for road users is intended for the safety of yourself and others, so that no one is harmed, besides also avoiding factors that cause negligence in driving, and understanding traffic signs on the road is also considered important to avoid this. Road signs are created for drivers so that drivers can understand them well and follow instructions so that the driver's journey is safe without any obstacles.

Regarding the judge's decision or court decision is an important aspect and is needed to resolve criminal cases. Thus it can be concluded that the judge's decision is useful for the defendant to obtain legal certainty about his status and at the same time can prepare the next steps. In the modern criminal justice system such as the Criminal Procedure Code (KUHAP) as a formal legal principle, taking the law into one's own hands is not permitted.

Judges in criminal case examinations try to find material truth based on the facts revealed in the trial, and adhere to what is formulated in the public prosecutor's indictment, in accordance with the provisions of both formal and material criminal law and the conditions that can be punished for a defendant, this is based on the trial examination, where the evidence presented by the Public Prosecutor, including the statements of witnesses that are in accordance with each other plus the statement of the defendant who honestly admits the actions he has committed. Before determining or passing a verdict on the perpetrator of the crime committed. The judge first considers many things. Such as the facts at trial, legal and non-legal considerations, the circumstances and background of the defendant's family, and other things related to the crime committed by the

defendant. Legal considerations are proof of the elements of the crime charged by the public prosecutor, the elements in Article 310 paragraph (4) of Law of the Republic of Indonesia No. 22 of 2009 concerning Traffic and Road Transportation. In accordance with what is charged by the public prosecutor and must be based on trial facts. Judges may not decide a case by imposing a sentence greater than that demanded by the Public Prosecutor. However, judges have the authority to impose a lower sentence than the demands by considering the psychology of the defendant during the trial, namely the defendant admits all his actions before the trial and the aggravating and mitigating reasons are also the basis for the judge's consideration before sentencing the defendant.

Criminalization is a process. Before this process takes place, the role of the Judge is very important. He concretizes the criminal sanctions contained in a regulation by imposing a sentence on the defendant. So the sentence imposed is expected to resolve conflicts or disputes and also bring a sense of peace to society. Criminalization is not intended to cause suffering and is not allowed to degrade human dignity, but is a way of giving meaning to the Indonesian legal system. Although criminalization is essentially a misery. However, criminalization is not intended to cause suffering and is not allowed to degrade human dignity.

Before deciding a case, the judge must pay attention to the prosecutor's indictment, the testimony of witnesses present at the trial, the defendant's testimony, evidence, subjective and objective conditions for a person to be punished, and mitigating and aggravating factors. The actions taken by a defendant must be proven by the judge by examining the elements of the article and then adjusting them to the facts revealed in the trial and the evidence by analyzing them. By paying attention to the elements contained in the formulation of Article 310 paragraph (4) of Law of the Republic of Indonesia No. 22 of 2009, namely because his actions resulted in the loss of another person's life. In considering whether the defendant committed a crime or not, by analyzing the elements contained in the provisions of Article 310 paragraph (4) of Law of the Republic of Indonesia No. 22 of 2009 based on legal theory and doctrine and then connecting them with the defendant's actions with the incident.

In proving the elements contained in the indictment which are supported by the fulfillment of the absolute requirements of proof, namely *unus testis nullum testis*, namely the existence of at least two pieces of evidence, then the elements referred to in the indictment have been fully fulfilled, where to prove the indictment the Public Prosecutor can submit evidence in the form of witness statements, indicative evidence and statements from the defendant.

After the Panel of Judges is convinced that the defendant has committed a criminal act of negligence that caused the death of another person, the Panel of Judges must also consider whether there are reasons for the defendant that can



be the basis for eliminating the criminal penalty, both forgiving reasons and justification reasons. The legal considerations by the judge in deciding a case regarding negligence that caused the death of another person. In deciding a case, the judge should consider the atmosphere at the time of the incident, whether the incident was purely negligence or intentional, what the level of consequences were caused by the crime committed and what the status of the defendant was, whether the defendant's detention was detrimental to many or whether many were neglected, especially for the public interest.

This can be a consideration by the judge in deciding a case to reduce the criminal penalty to be served by the defendant by giving a prison sentence of 1 (year) 4 (four) months. Because the defendant must be declared responsible for his actions, for that reason the Panel of Judges in sentencing the defendant first also considers the aggravating and mitigating factors for the defendant and the reasons that could possibly release the defendant from detention.

Factors considered by the judge in mitigating the judge's decision are:

- a. The defendant and the victim's family have made peace
- b. The defendant regretted and promised not to repeat his actions.
- c. The defendant has never been convicted

With the implementation of criminal law, as well as criminal sanctions, it can at least provide benefits and lessons for everyone who does their job as a driver or everyone who drives to be more careful and stay focused on the highway to avoid more victims. It can also be detrimental to drivers in this case if there is an accident that results in the death of another person.

The application of the law here can not only reduce negligence that results in the death of others, but can also reduce and anticipate other negligence from happening again. The application of the law is carried out by law enforcers, not only the police or judges and prosecutors who are law enforcers, especially in cases of negligence, the transportation service should be responsible for being able to repair the road structure and road contours that often cause accidents and supervise public transportation and private transportation so that accidents due to negligence do not happen again. Government support is considered very important in reducing the number of motor accidents.

## 2) Sanctions for Traffic Negligence Causing Loss of Life According to Islamic Law

Negligence in Islam is called al-khata. Al-khata according to the term is an act that is forgiven. In the case of a mistake, the intention and knowledge of the



perpetrator are not considered at all, there is no guesswork or caution in doing and there is no sin whatsoever.<sup>6</sup>

According to Ahmad Wardi Muslich, negligence (al-khata) is the occurrence of an act beyond the will of the perpetrator, without any unlawful intent, the act occurs due to his negligence or lack of caution. The negligence in question is an act that has no intention and purpose to carry out the act.<sup>7</sup>

In the analysis of criminal law. taking someone's life due to negligence is included in the crime of murder. In the analysis of criminal law regarding legal sanctions for drivers who commit negligence as stated in Article 310 paragraph 4 of Law Number 22 of 2009 concerning Traffic and Road Transportation is an unintentional crime, namely a crime where the perpetrator does not intentionally (intend) to commit a prohibited act and the act occurs as a result of his negligence. Crimes that are intentional, semi-intentional, and due to error, in criminal law are murder crimes or Al-Qatl.

Intentional murder, in Arabic, is called qatlual-amd. Etymologically, the word qatlu al-amd is composed of two words, namely al-qatlu and al-amd. The word al-qatlu means an act that can eliminate the soul, while the word al-amd means intentionally and with intention. What is meant by intentional murder is a mukallaf intentionally killing a soul protected by its blood by means of a tool that is usually used for killing.

Semi-intentional murder (syibhu al-amd) is when a mukallaf intends to kill a person whose blood is protected by means and tools that do not usually kill. This could be because he intends to harm him or to beat him, such as hitting him with a whip, stick, small stone, or with his hand, and with all means or tools that do not generally kill.

Murder due to negligence is an act committed by a person without any element of intent that results in the death of another person and uses a common tool that is not deadly. Basically in this murder the loss of a person's life is not the intention of the perpetrator, but because of his negligence in acting resulting in the loss of a person's life.

The elements of murder due to negligence as stated by Abdul Qadir Audah are as follows:

- a. There is an Act that Resulted in the Death of the Victim

Murder due to negligence is implied to be an act committed by the perpetrator against the victim. The act is implied to result in death, either at that time or

---

<sup>6</sup>M. Abdul Mujieb et al., 2004, Dictionary of Fiqh Terms, Pustaka Firdaus, Jakarta, p. 155.

<sup>7</sup>Ahmad Wardi Muslich, 2006, Introduction and Principles of Islamic Criminal Law, Sinar Grafika, Jakarta, p. 155.

afterwards, if the victim does not die then the crime is included in the crime of other than death due to error, not murder.

#### b. The Act Occurred Due to Negligence

This element of negligence exists if an action results in a result that is not desired by the perpetrator. Thus, in this murder, death occurred due to the perpetrator's negligence because he was not careful. Carelessness itself basically does not result in punishment, unless there is loss to another party. Thus, if there is a loss then there is liability for negligence and if there is no loss then there is no liability.

#### c. The Existence of a Cause and Effect Relationship Between Mistakes and Death

For there to be responsibility for the perpetrator in murder due to negligence, it is implied that death is a result of the negligence. Thus, negligence is the cause of death, there is a causal relationship, if the relationship is broken then there is no responsibility for the perpetrator.

Murder due to negligence, as explained above, is a murder where the perpetrator had no intention of committing the act but was careless. The sanctions for murder due to negligence in Islamic criminal law are as follows:

#### a. Obligation to Pay Diyat

The obligation for perpetrators of murder due to negligence is diat mukhaffafah, which is a lightened diyat. The definition of diyat is property that is required for crimes against the soul or something similar. With this definition, it can be interpreted that diyat is specifically intended as a substitute for the soul or something similar, meaning that the payment occurs because it is related to a crime against the soul or life of a person.<sup>101</sup> The basis for the diyat is stated in Qs An-Nisa (4): 92:

God bless you God *وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَفْتُلَ مُؤْمِنًا إِلَّا خَطَاً ۚ وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ* willing  
Allah's blessings *وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ ۚ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ مَتَحْرِيرِ رَقَبَةٍ*  
*مُؤْمِنَةً ۚ فَمَنْ لَمْ يَجِدْ فَصِيَامٌ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ*

Meaning: "And it is not appropriate for a believer to kill a believer (another), except because he is guilty (accidentally), and whoever kills a believer because he is guilty (let him) free a believing slave and pay the death that is handed over to his family (the killed person), unless they (the family of the killed person) give alms. If he (the killed person) is from a people (infidels) with whom there is an Agreement (peace) between them and you, then (let the murderer) pay the death that is handed over to his family (the murdered) and free his faithful servants. Whoever does not obtain it, then let him (the murderer) fast for two

consecutive months for acceptance of repentance from Allah and Allah is All-Knowing, All-Wise."

Diyat mukhaffah is a diat that applies to murder due to negligence which is charged to the heirs of the perpetrator of the murder and paid in the amount of diat 100 camels which if detailed is as follows:

- 1) 20 bintu ma'khad camels (2 year old female camels)
- 2) 20 Ibn Ma'khad camels (2 year old male camels) according to Hanafiyah and Hanabilah (3 year old male camels), according to Malikiyah and Syafi'iyah
- 3) 20 Bintu Labun camels (3 year old female camels)
- 4) 20 hiqqah camels (4 year old camels)
- 5) 20 jadza'ah camels (5 years old)

b. Obligation of Expiation Punishment

Kafarat punishment for murder due to negligence is the main punishment. The kafarat obligation is carried out by freeing the believing slave, but if the slave does not obtain it then the alternative is to fast for two consecutive months.

This expiation is adjusted to the number of victims who died according to the opinion of some scholars, so for example in the case of an accident that killed two people, then the perpetrator must free two believing slaves or fast for two consecutive months twice. The second opinion says that one expiation is enough.

### **3.2. Positive Criminal Law Review of Decision Number 144/Pid.Sus/2024/PN Btg Criminal Act of Negligence Causing the Loss of Life of Another Person**

#### **1) Positive Criminal Law Review of Decision Number 144/Pid.Sus/2024/PN Btg Criminal Act of Negligence Causing the Loss of Life of Another Person**

In the criminal procedure system, what is currently being promoted is the adversary system, namely the face-to-face system or also commonly called accusatoir. This system is the opposite of inquisitoir where the defendant becomes the object of examination, while the judge and public prosecutor are on the same side. By promoting the face-to-face system, it is assumed that there is a defendant who has a legal advisor behind him, while on the other side there is a public prosecutor who on behalf of the state demands a criminal case. The judge is in the middle of the parties to the case and does not take sides.<sup>8</sup>

In decision number 144/Pid.Sus/2024/PN Btg, stated that the defendant was named Dwi Oktiawan Putra Prasetya bin the late H. Ponimin, place and date of

---

<sup>8</sup>Andi Hamzah, 2015, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, p. 64.

birth Jakarta 24 October 1981, male, Muslim, residing in Hamlet II Hamparan Perak Village, Ham Subdistrict Parang Perak, Deli Serdang Regency and works as a self-employed person.

Based on the indictment from the Public Prosecutor, the defendant Dwi Oktiawan Putra Prasetya on Thursday, May 23, 2024 at around 04.30 WIB or at least at some time in May 2024 at the KM 376 + 200 toll road, lane A Batang - Semarang, in Ketangan Village, Grinsing District, Batang Regency or at least at another place that is still included in the jurisdiction of the Batang District Court which has the authority to examine and try this case, driving a motorized vehicle due to his negligence resulted in a traffic accident resulting in death and injury, the defendant's actions were carried out in the following manner:

a. On Wednesday, May 22, 2024 at around 19.30 WIB, defendant Dwi Oktiawan Putra Prasetya bin Ponimin drove a Toyota Inova Venturer vehicle with Police Number B-777-FIE carrying two passengers, namely the victim Zarghifari who was sitting in the front seat of the car and witness Doni Alifsyahrin bin Alfian sitting in the middle seat of the car from Jakarta to Kendal Regency and Semarang via the toll road entering from the Rawamangun toll gate to the Cipali toll road.

b. That at around 21.30 WIB the defendant Dwi Oktiawan Putra Prasetya bin Ponimin together with witness Doni Alifsyahrin bin Alfian and victim Zarghifari took a break at Rest Area KM 102 lane A and at around 23.00 WIB continued their journey to Kendal and Semarang, during the trip at around 00.00 WIB the defendant Dwi Oktiawan Putra Prasetya bin Ponimin stopped again at Rest Area Toll KM 166 lane A to rest for a while, then continued the journey, but the driver of the KBM Toyota Inova Veturer No. Pol B-777-FIE was replaced by the victim Zarghifari, until on Thursday, May 23, 2024 at around 01.00 WIB stopped again to rest at Rest Area Toll KM 275 lane A, after resting for a while then the defendant Dwi Oktiawan Putra Prasetya bin Ponimin returned to driving the KBM Toyota Inova Veturer No. Police B-777-FIE and victim Zarghifari sat in the front seat to the left of the defendant.

c. That on the way to Kendal and Semarang at around 04.30 WIB the defendant Dwi Oktiawan Putra Prasetya bin Ponimin returned to driving the Toyota Inova Venturer Vehicle No. Pol. B-777-FIE from west to east in the right lane passing a straight, flat, good concrete road, sunny weather and quiet traffic and suddenly the defendant took a short nap (Microsleep) and the vehicle being driven was not controlled so that it hit the back of the HINO Tronton Truck Vehicle No. Pol. BE-9805-AH which was traveling in front of the left lane and the Toyota Inova Venturer Vehicle No. Pol. B-777-FIE stuck to the truck body and finally stopped.

d. That due to the negligence of the defendant Dwi Oktiawan Putra Prasetya bin Ponimin, the victim Zarghifari who was sitting in the front left position of the vehicle died and the witness Doni Alfisyahrin suffered injuries.

For the defendant's actions, during the trial process, the Public Prosecutor essentially charged him with a single charge as regulated in Article 310 paragraph (2) and (4) of Law of the Republic of Indonesia No. 22 of 2009 concerning Traffic and Road Transportation, the elements of which are as follows:

- a. Each person
- b. Driving a motor vehicle
- c. Who due to his negligence caused a traffic accident
- d. Which causes other people to die, minor injuries and vehicle damage

Regarding the considerations of the Panel of Judges in court, the defendant who has committed a criminal act of traffic negligence that caused the loss of another person's life will be examined first and considered by the panel of judges whether the act charged to the defendant has fulfilled the elements of Article 310 paragraph 4 (four) of the Traffic and Road Transportation Law. The elements of the article are: First, the meaning of every person is anyone or anyone as a legal subject who in the Criminal Code is suspected of having committed a criminal act and is brought forward as a defendant. In this case, the Public Prosecutor brought forward as a defendant named Dwi Oktiawan, the son of Prasetya, son of Ponimin where after the Panel of Judges asked about the defendant's identity at the trial, it turned out to match the defendant's identity in the Public Prosecutor's indictment, therefore the element of every person has been fulfilled.

*Second*, driving a motor vehicle due to his negligence resulting in the death of another person, namely based on the facts revealed in court, it is true that the defendant Dwi Oktiawan Putra Prasetya bin Ponimin was driving a Toyota Inova Venturer with police number B-777-FIE which was moving from West to East or from Jakarta to Kendal - Semarang at a speed of approximately 100 km / hour on Thursday, May 23, 2024 at around 04.30 WIB. At that time the defendant did not notice the victim defendant Zarghifari sitting in the front left position of the vehicle died. This is also supported by the results of the Visum Et Repertum Number 43 / III.6AU / VER / VII / 2024 in the name of Zarghifari in the examination of a patient with an accident on the toll road in a state of death, experiencing closed fractures to the head, face and right and left jaw, closed fractures to the right chest, abrasions on the back of the right and left hands with the conclusion that the above abnormalities were due to impact with hard objects. Thus, based on these facts, this element has been proven legally and convincingly according to the law.

Based on the facts contained in the indictment, the defendant has been charged by the Public Prosecutor with a single charge, then it can be analyzed legally based on the article charged to the defendant, namely Article 310 paragraph 4 of Law Number 22 of 2009 concerning Traffic and Road Transportation. The criminal elements that must be met so that the defendant can be subject to sanctions are as follows:

a. Each person

Everyone here is anyone or legal subject who commits a criminal act and can be held accountable for his actions. The defendant Dwi Oktiawan Putra Prasetya bin Ponimin who was brought to trial based on the facts revealed in the trial obtained from the evidence, evidence and the defendant's own statement which confirmed his identity in the public prosecutor's indictment, then the defendant brought in this case is Dwi Oktiawan Putra Prasetya bin Ponimin as a human being who can be held accountable for his actions. Thus, the element of "everyone" has been proven legally and convincingly according to the law.

b. Driving a Motor Vehicle Due to Negligence

It can be seen from the legal facts revealed in the trial, namely that the defendant Dwi Oktiawan, the son of Prasetya, son of Ponimin on Thursday, May 23, 2024 at around 04.30 WIB, the defendant on behalf of Dwi Oktiawan, the son of Prasetya, son of Ponimin driving a Toyota Inova Venturer with Police Number B-777-FIE from West to East or from Jakarta to Kendal - Semarang, while the victim was Zarghifari. At that time the defendant did not pay attention to the victim Zarghifari who was sitting in front on the left. At that time the Toyota Inova Venturer with Police Number B-777-FIE driven by the Defendant was speeding so that it could not be controlled anymore by the defendant so that it hit the HINO Tronton Truck which was in the left lane and caused the victim to hit the rear left side of the truck and died on the spot. Thus, the defendant's actions caused the victim Zarghifari to die. Based on the legal facts above, the element of "driving a motorized vehicle due to negligence" has been proven and convincing according to law.

c. Which results in other people dying

What is meant by death here is the death of a person, which is not meant at all by the defendant. The death was the result of carelessness or negligence of the defendant. Based on the above understanding, the connection with the death of the victim can be proven and supported by Visum Et Repertum results Number 43/III.6AU/VER/VII/2024 on behalf of Zarghifari in the examination of a patient with an accident on the toll road in a state of death, experiencing closed fractures to the head, face and right and left jaw, closed fractures to the right chest, abrasions to the back of the right and left hands with the conclusion that the above abnormalities were due to impact with hard objects. Thus, based on

these facts, this element has been proven legally and convincingly according to the law. Thus, these elements have been fulfilled and are convincing according to law.

The decision of the Panel of Judges in imposing sanctions is of course inseparable from consideration of aggravating and mitigating factors, however in decision Number 144/Pid.Sus/2024/PN Btg found mitigating factors for the defendant listed in the verdict. This is a consideration of the Panel of Judges in which the defendant was given a sanction of 4 (four) months imprisonment.

Based on the analysis above, the author concludes that the criminal sanctions imposed by the judge are very light, which is only 4 (four) months in prison. The panel of judges should pay close attention to the aggravating factors of the defendant. The aggravating factor is that the defendant's actions resulted in Zarghifari's death.

This has shown that the defendant was indeed negligent in using his motor vehicle which caused the loss of another person's life. So, when reviewed based on the criminal penalties contained in Article 310 paragraph 4 of Law Number 22 of 2009 concerning Traffic and Road Transportation, the imprisonment given of 4 (four) months is too light from the maximum sentence of 6 (six) years in prison. The imprisonment given in decision Number 144 / Pid.Sus / 2024 / PN Btg clearly does not provide a deterrent effect, even though one of the purposes of the law is to create a deterrent effect for the perpetrator.<sup>9</sup> Thus is the analysis of decision Number 27/Pid.Sus/2016/PT PAL reviewed from a positive law perspective.

Meanwhile, if viewed from Islamic law, according to the jurists, the actions of perpetrators of traffic negligence which cause the loss of people's lives are considered culpable homicide. According to Abdul Qadir Audah, culpable homicide is murder due to negligence where the perpetrator intentionally commits an act, but does not have the intention of hitting a person but because there was a mistake either in the act or in the suspicion.<sup>10</sup> The definition given by Abdul Qadir Audah was emphasized by Wahbah Zuhaili, namely that murder by mistake is murder that occurs without any unlawful intent, either in the act or the object.<sup>11</sup>

The elements of culpable homicide as identified by Abdul Qadir Audah include:<sup>12</sup>

a. There is an Act that Resulted in the Death of the Victim. To realize the crime of murder due to error, it is required that there is an act carried out by the

---

<sup>9</sup>CST Kansil, 2011, Introduction to Legal Science, Rineka Cipta, Jakarta, p. 39.

<sup>10</sup>English: Theology of the Prophet Muhammad, 1990, Theology of the Prophet Muhammad, Volume II, Dar al-Kitab al-Ilmiyah, Al-Arabi, p. 104.

<sup>11</sup>Wahbah Zuhaili, 1989, Al-Fiqh Al-Islami wa Adillatuhu, Juz VI, Dar Al-Fikr, Damascus, p. 223.

<sup>12</sup>English: Theology of the Prophet Muhammad, 1989, p. 108-109.



perpetrator against the victim, whether the act was intended or not. Murder due to negligence is also required to result in death, either at that time or afterwards, if the victim does not die then the crime is included in the crime of other than death due to error, not murder.

b. The act occurs due to negligence.' This element of negligence exists if an action results that are not intended by the perpetrator. Thus, in this murder the death occurred due to the perpetrator's negligence because he was not careful. Carelessness itself basically does not result in punishment, unless there is loss to another party. Thus, if there is a loss then there is liability for negligence and if there is no loss then there is no liability.

c. There is a Causal Relationship Between Mistake and Death. For there to be responsibility for the perpetrator in murder due to negligence, it is implied that death is a result of the negligence. Thus, negligence is the cause of death, there is a causal relationship, if the relationship is broken then there is no responsibility for the perpetrator.

Sanctions for perpetrators of al-qatl al-khata are divided into 2 (two) types, namely the main sanction and additional sanctions. The main sanction for murder due to error is diyat and kifarat. The diyat punishment due to error is diyat mukhaffafah, which is a lightened diyat.

When connected with traffic negligence that caused the loss of another person's life in decision number 27/Pid.Sus/2016/PT PAL carried out by the defendant Adi Irawan, it is necessary to explain it. The perpetrator was in fact not careful in driving his vehicle and caused the victim to die in traffic and made the family feel very lost, so that the perpetrator's actions can be categorized as murder due to a mistake in Islamic criminal law.

At the level of murder due to negligence that occurs in traffic, in Islamic criminal law the perpetrator is categorized as a diat crime, which is a crime that is threatened with diat punishment and the punishment has been regulated by sharia. The difference with had punishment is that had punishment is the right of Allah (society's right) while diat is an individual right. Diat is a human right, so the punishment can be forgiven or dropped by the victim or his family.

Based on the above description, in criminal law enforcement, the aspect of responsibility is the center of attention in determining whether a perpetrator can be subject to criminal sanctions for his actions. This also applies in cases of traffic accidents caused by driver negligence, which often result in major losses, even death. To analyze this problem, the theory of criminal responsibility in positive law and Islamic law is used, as well as the theory of error or culpa as the basis for evaluating the perpetrator's error.

In Indonesian positive law, criminal responsibility refers to a person's ability to be subject to criminal punishment for an act that meets the elements of a crime. This includes two main elements: *actus reus* (criminal act) and *mens rea* (the perpetrator's mental attitude or evil intention). A person cannot be held criminally responsible simply because an event occurs, but it must be proven that he committed the crime and did so with fault.

Pompe stated that the ability to be criminally responsible requires the ability to think psychically and the ability to control one's will. Van Hamel explained that a person's soul must be able to understand the social value of his actions and realize that his actions are against the law. This concept is important because in the context of traffic accidents, negligent perpetrators can still be held accountable if their negligence meets the requirements of criminal error.

Mistake or *culpais* a form of criminal liability that arises not because of malicious intent (*dolus*), but because of negligence or carelessness. In the context of traffic accidents, this error is very relevant because most cases involve unintentional actions, but the consequences are fatal. Article 359 of the Criminal Code states that anyone who, due to his negligence, causes the death of another person can be punished with a maximum of five years in prison. This shows that errors in the form of negligence are also recognized as a basis for criminal liability.

Overall, the theory of criminal responsibility and the theory of fault (*culpa*) provide a strong analytical framework for understanding legal responsibility in traffic accident cases. In both positive law and Islamic law, a person can only be punished if proven guilty, either intentionally or negligently. In positive law, the aspects of *mens rea* and *culpa* are key in qualifying traffic crimes. In Islamic law, responsibility is based on the perpetrator's awareness, intention, and knowledge of the consequences of his actions. By understanding the basics of this theory, law enforcement officers can apply the law fairly and proportionally, and provide a sense of justice for victims and society.

The author also tries to include the perspective of Islamic law, by mentioning that traffic violations can be categorized as *ta'zir* crimes, namely types of violations whose punishment is determined by the authorities. This reflects a comparative approach that strengthens the social and religious legitimacy of the application of positive law. In the context of Indonesia as a country with a Muslim majority population, the integration of Islamic legal norms can strengthen the effectiveness of the law through the values of obedience and individual responsibility.

#### **4. Conclusion**

Traffic accidents due to driver negligence in the jurisdiction of the Batang Police show an increasing trend and require serious handling through a legal approach. The application of criminal law to perpetrators of negligence has been regulated

in Article 359 of the Criminal Code and Article 310 paragraph (4) of Law No. 22 of 2009 concerning Traffic and Road Transportation, which regulates criminal sanctions for negligence that causes death. From an Islamic legal perspective, this act is classified as *jarimah khatha'* (murder by mistake), with consequences of *diyat* and *kafarat* as a form of moral and legal responsibility. The main factors causing accidents include human error (such as fatigue and lack of focus), road conditions, and vehicles that are not roadworthy. Therefore, efforts to overcome this are not sufficient only with criminalization, but must also involve driver development, infrastructure improvements, and fair and consistent law enforcement.

## 5. References

### Journals:

- Andi Zeinal Marala, "Penegakan Hukum Pidana Terhadap Kelalaian Pengemudi Yang Menimbulkan Kecelakaan Di Jalan Raya", *Lex Crimwn*, IV, 5, (Juli 2015).
- Cahya Primarta, "Analisis Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian Terhadap Jaminan Sosial Korban Kecelakaan Lalu Lintas di PT. Jasa Raharja (Persero) Cabang Jawa Tengah", *Jurnal Daulat Hukum Volume 1 (1)*, Published Master Of Law, Faculty of Law Unissula.
- Eva Iryani, 2017, "Hukum Islam, Demokrasi dan Hak Asasi Manusia", *Jurnal Ilmiah Univeritas Batanghari Jambi*, Vol. 17, No.2.
- Hanafi, "Reformasi Sistem Pertanggungjawaban Pidana", *Jurnal Hukum*, VI, 11, (Februari 1999).
- Kutbuddin Aibak, 2005, "Eksistensi Maqashid al-Syari'ah dalam Istinbath Hukum", *Jurnal AHKAM*, Vol. 10 No. 1.
- M. Budi Hendrawan, "Hubungan Antara Kesengajaan Terhadap Pertanggungjawaban Pidana Dalam Kasus Kecelakaan Lalu Lintas Di Jalan Yang Menyebabkan Hilangnya Nyawa Orang Seseorang", *USU Law Journal*, III, 1 (April 2015).
- Marsaid, "Faktor Yang Berhubungan Dengan Kejadian Kecelakaan Lalu Lintas Pada Pengendara Sepeda Motor Di Wilayah Polres Kabupaten Malang", *Jurnal Ilmu Keperawatan*, I, 2, (November 2013).
- Sangki, Agio, "Tanggung jawab pidana pengemudi kendaraan yang mengakibatkan kematian dalam kecelakaan lalu lintas", *Lex Crimen*, 1 (1) 2012.

Simbolon Bonar, 2016, Tinjauan Fiqh Jinayah Terhadap Tindak Pidana Pemalsuan Surat Menurut Pasal 263 Ayat 2 KUHP, *Jurnal UIN Raden Fatah Palembang*.

Sipayung, Dasdo Vangi Doan, "Fungsi Visum Et Repertum Dalam Penuntutan Perkara Pidana Kealpaan Yang Menyebabkan Matinya Orang", *Jurnal Ilmu Hukum*. 2014.

Siska Lis Sulistiani, 2018, "Perbandingan Sumber Hukum Islam", *Jurnal Peradaban dan Hukum Islam*, Volume 1 Nomor 1.

Zakaria Syafei, 2014, 'Pertanggungjawaban Pidana dalam Hukum Pidana Islam', *Jurnal Al-Qalam*, Vol 31 no 1 (Januari-Juni).

#### **Books:**

Abdul Al-Qadir Audah, 1990, *At-Tasyri Al-Jinaiy Al-Islamiy*, Juz II, Dar al-Kitab al-Ilmiyah, Al-Arabi.

Achmad Ali, 2010, *Menguak Teori Hukum dan Teori Peradilan*, Kencana, Jakarta.

Ahmad Djazuli, 1997, *Fiqh Jinayah: Upaya Menanggulangi Kejahatan Dalam Hukum Islam*, PT Bulan Bintang, Jakarta.

Ahmad Hanafi, 1997, *Azas-Azas Hukum Pidana Islam*, PT. Bulan Bintang, Jakarta.

Ahmad Wardi Muslich, 2005, *Hukum Pidana Islam*, Sinar Grafika, Jakarta.

Ali Zainudin. 2010, *Metode Penelitian Hukum*. Sinar Grafika, Jakarta.

Amir Ilyas, 2012, *Asas-Asas Hukum Pidana: Memahami Tindak Pidana Dan Pertanggungjawaban Sebagai Syarat Pemidanaan* Rangkang Education Yogyakarta & PuKAP Indonesia, Yogyakarta.

Amran Suadi dan Mardi Candra, 2016, *Politik Hukum Prespektif Hukum Perdata dan Pidana Islam serta Ekonomi Syariah*, Kencana, Jakarta.

Andi Hamzah, 2015, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta.

Barda Nawawi Arief, 2007, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Predana Media Group, Jakarta.

C.S.T. Kansil, 2011, *Pengantar Ilmu Hukum*, Rineka Cipta, Jakarta.

Departemen Pendidikan Nasional, 2003, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta.

DL Chrysnanda. 2010. *Kenapa Mereka Takut dan Enggan Berurusan dengan Polisi? (sebuah catatan harian)*, Yayasan Pengembangan Kajian Ilmu Kepolisian (YPKIK), Jakarta.

I Made Pasek Diantha, 2016, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, Prenada Media Group, Jakarta.

Indriarto Seno Adji, 2012, *Pergeseran Hukum Pidana*, Diadit Media, Jakarta.

Komariah E. Sapardjaya, 2000. *Pertanggungjawaban Pelaku Tindak Pidana*, Angkasa Baru, Jakarta.

Komariah Emong Supardjadja, 2002, *Ajaran Melawan Hukum Dalam Hukum Pidana Indonesia*, Alumni, Bandung.

Laila Mulasari, 2012, *Kebijakan Formulasi tentang Tindak Pidana Kesusilaan Dunia Maya dalam Prespektif Hukum Islam*, MMH.

Lathoif Ghozali, dkk, 2019, *Fiqh Lalu Lintas : Tuntunan Islam dalam Berkendara secara Aman*, UIN Sunan Ampel Press, Surabaya.

M. Abdul Mujieb dkk, 2004, *Kamus Istilah Fiqh*, Pustaka Firdaus, Jakarta.

Mahrus Ali, 2011, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta.

Moeljatno, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, Bina Aksara, Jakarta.

**Regulation:**

Criminal Code.

Law Number 22 of 2009 concerning Road Traffic and Transportation.