

## Legal Analysis of The Event of Every Person Who Intentionally Drives a Motor Vehicle in a Manner or in a Circumstance That Results in a Traffic Accident with Death, By Studying Decision Number 71/Pid.Sus/2025/Pn/Cilacap

Adim Haryoko <sup>1)</sup> & Arpangi <sup>2)</sup>

<sup>1)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [adimharyoko.std@unissula.ac.id](mailto:adimharyoko.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.** *This research aims to analyze the application of Article 311 paragraph (5) of Law No. 22 of 2009 to drivers who operate motor vehicles under the influence of alcohol resulting in death, particularly through an examination of the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp, as well as to assess the extent to which this provision protects the public and reflects the function of criminal law in the context of traffic safety. This study employs a normative juridical method through an examination of statutory regulations, doctrines of intent and negligence, the principle of legality, and relevant legal literature, complemented by an empirical juridical approach through an in-depth analysis of the facts and judicial considerations presented in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp. The findings indicate that the application of Article 311 paragraph (5) has been executed accurately and proportionally, as the panel of judges successfully established the element of intent in the form of *dolus eventualis*, considering that the defendant was aware of the fatal risks of driving while intoxicated; at the same time, the study underscores the importance of maintaining a clear distinction between intent and negligence to prevent interpretative expansion that would conflict with the principle of legality.*

**Keywords:** Article 311 Paragraph (5); *Dolus Eventualis*; Traffic Accident.

## **1. Introduction**

The Constitution of the Republic of Indonesia firmly states that "Indonesia is a state based on law" (Article 1 paragraph (3) of the 1945 Constitution). This fundamental norm places law as the primary pillar in every aspect of national and state life. This means that all actions, both by citizens and state administrators, must comply with legal provisions. The principle of a state based on law emphasizes not only legal certainty but also substantive justice that guarantees the protection of basic human rights, including the right to road safety.<sup>1</sup>

In the view of criminal law academics, a state based on law demands a balance between certainty, benefit, and justice in every application of norms.<sup>2</sup> This is as emphasized by Sri Endah Wahyuningsih, that the enforcement of criminal law should not stop at being merely repressive, but must be based on the values of justice that exist in society.<sup>3</sup> Therefore, traffic laws that regulate public safety must be understood not merely as an administrative tool, but as an instrument for protecting the right to life and a sense of security for every individual.

Furthermore, Jawade Hafidz emphasized that the criminal justice system must always be directed at protecting society from all forms of threats, whether intentional or due to negligence.<sup>4</sup> In the context of traffic, serious violations such as drunk driving are not only a matter of driver discipline but also a threat to public safety that can be life-threatening. Therefore, the application of the law in cases of traffic accidents caused by drunk drivers must be understood as a concrete implementation of the principle of the rule of law in protecting the public while upholding substantive justice.

Academic studies show that traffic law enforcement should not be viewed merely as a repressive instrument to punish road violators. Furthermore, traffic law serves a strategic function as a means of building a culture of order and safety, which must be supported by modern oversight mechanisms such as Electronic Traffic Law Enforcement (ETLE). The implementation of this system is seen as emphasizing not only the punitive aspect but also as a preventive and educational instrument to promote public legal awareness. Therefore, traffic law

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<sup>1</sup>The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

<sup>2</sup>Arief, BN (2008). Anthology of criminal law policies. Jakarta: Kencana.

<sup>3</sup>Wahyuningsih, SE (2017). Development of criminal law based on the values of justice. *Khaira Ummah Law Journal*, 12(2), 211–222. <http://jurnal.unissula.ac.id/index.php/RH>

<sup>4</sup>Hafidz, J. (2020). Law enforcement in a state based on the rule of law: A theoretical and practical study. Semarang: UNISSULA Press.

enforcement can be effective when it is able to strike a balance between legal certainty and safety protection for all road users.<sup>5</sup>

Road traffic is a vital aspect of the socio-economic life of modern society. Roads serve not only as a means of mobility but also as public spaces that must be maintained for safety. The high number of traffic accidents in Indonesia demonstrates that safety aspects are often neglected, whether due to technical factors, driver negligence, or deviant behavior. Data from various studies indicate that traffic accidents remain a major contributor to preventable deaths, therefore legal regulations in this area play a crucial role in providing legal protection for road users.<sup>6</sup>

Within the criminal law framework, traffic is no longer viewed merely as an administrative issue, but also as a domain with criminal implications when violations result in loss of life. This demonstrates a paradigm shift, from merely enforcing technical regulations to strengthening legal norms that guarantee the protection of human life. Law Number 22 of 2009 concerning Traffic and Road Transportation serves as the legal basis that affirms this principle, particularly through stricter criminal provisions for drivers who intentionally endanger the safety of others.<sup>7</sup>

Indonesia, as a country with a rich socio-cultural diversity, presents unique challenges in enforcing traffic norms. In our social kinship, from family gatherings to celebrations or casual gatherings, drinking habits often emerge as part of the dynamic of togetherness. This habit creates a situation where drunk driving behavior can be considered normal. However, behind this intimacy lies a serious threat to public safety when someone drives while intoxicated, where the risk of fatalities increases sharply. In this context, drivers are not only faced with moral norms, but also face criminal legal consequences based on Law Number 22 of 2009, specifically Article 311 paragraph (5), which states:<sup>8</sup>

*"In the event that the act as referred to in paragraph (1) results in the death of another person, the perpetrator shall be punished with a maximum prison sentence of 12 (twelve) years or a maximum fine of IDR 24,000,000.00 (twenty-four million rupiah)."*

This norm affirms a firm legal position against drivers who intentionally operate motor vehicles in conditions or manners that endanger others, resulting in the

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<sup>5</sup>Sitorismi, T. (2025). Electronic traffic law enforcement: The spirit of modern law (Electronic Traffic Law Enforcement) [Thesis, Sultan Agung Islamic University]. Sultan Agung Islamic University Repository.

<sup>6</sup>Mulyadi, L. (2016). Criminal justice system: Perspectives on theory and practice of justice. Alumni.

<sup>7</sup>Hamzah, A. (2014). Indonesian criminal procedure law. Sinar Grafika.

<sup>8</sup>Republic of Indonesia. (2009). Law Number 22 of 2009 concerning Traffic and Road Transportation. State Gazette of the Republic of Indonesia 2009 Number 96.

death of others. Thus, this provision contrasts the cultural comforts that tend to be permissive of drinking at social events with the interests of criminal law, which prioritizes the protection of public safety.<sup>9</sup>

Within the framework of normative legal analysis, it is important to understand social reality as the empirical background for legal norms. A study by a Master of Law student at UNISSULA normatively highlights how the implementation of the Traffic and Road Transportation Law (LLAJ) is confronted with societal behavior that is not only in violation but also rooted in collective habits. One study, although not specifically about drunk driving but with structural relevance, shows that the level of traffic violations is often triggered by weak public legal awareness, including non-compliance with speed limits, red light running, and cell phone use, all of which result in fatal accidents and demand more effective and educational law enforcement.<sup>10</sup> This indicates that a culture that is tolerant of traffic violations can exacerbate the situation when drunk driving is involved.

Furthermore, normative research on concrete cases illustrates how the element of intent (*dolus eventualis*) or gross negligence (*culpa lata*) in drunk driving can change the nature of the violation from a mere traffic accident to a criminal offense with more serious threats. According to one study, a fatal traffic accident due to gross negligence can result in a sentence of up to 6 years in prison under the LLAJ Law (Article 310 paragraph [4]).<sup>11</sup>, and within the framework of Article 311 paragraph (5), drunk driving that poses a risk to the lives of others is clearly positioned as a serious violation that goes beyond mere surface safety. The element of alcohol aggravates the social and normative context because it indicates a disregard for potential danger, so that the aspects of moral and legal norms merge in determining sanctions.

This hadith emphasizes the high value of life in Islam, so that every careless action that risks causing death, including drunk driving, is seen as a serious violation of the principle of *ḥifẓ al-nafs*.

Thus, it is understandable that both Indonesian positive law and Islamic law find common ground in placing life as the highest legal interest. Indonesian positive law prioritizes a balance between retributive justice and preventive justice, while Islamic law establishes the principle of self-determination as the normative foundation for safeguarding life.

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<sup>9</sup>Soekanto, S. (2004). Factors influencing law enforcement. Raja Grafindo Persada.

<sup>10</sup>Yuliantoro. (2019). Application of the Negligence Element in the Traffic Accident Criminal Investigation Process. *UNISSULA Law Journal*, 35(1), 36–51.

<sup>11</sup>Alliance. (2025, July). Criminal Liability of Drunk Drivers Causing Death. *Alliance*, 2(4).

## 2. Research Methods

This type of research is descriptive-analytical, namely research that aims to systematically describe the object being studied and analyze it with reference to applicable legal theories and norms.<sup>12</sup> The descriptive nature is used to explain in detail the provisions of Article 311 paragraph (5) of Law No. 22 of 2009, its elements, and related doctrines, while the analytical nature is used to examine the application of these provisions in concrete cases, including testing the suitability of the judge's considerations with the principles of criminal law and the principle of protection of life in Islamic law.

## 3. Results and Discussion

### 3.1. KThe Legal Construction of Article 311 Paragraph (5) of Law No. 22 of 2009 is Applied in the Case of a Drunk Driver Causing Death, as Reflected in the Decision of the Cilacap District Court No. 71/Pid.Sus/2025/PN Clp

#### 1. Brief Chronology of the Cilacap Court Decision Case Number 71/PID.SUS/2025/PN/CILACAP

The identity of the defendant in this case is Defi Antonius Lumenon bin (late) Samuel Yohanes Lumenon, a 48-year-old man who works as a fisherman and lives in Cilacap. The defendant was arrested on January 2, 2025, then underwent a series of detentions by investigators, public prosecutors, and judges, including an extension of detention until June 9, 2025. During the legal process, the defendant received legal assistance from LBH “Onne Mitra Sejati” based on a power of attorney dated March 6, 2025. Against him, the Public Prosecutor submitted alternative charges which included Article 311 paragraph (5) of Law Number 22 of 2009 concerning Traffic and Road Transportation regarding the act of driving a motorized vehicle in a dangerous manner resulting in the death of another person, Article 310 paragraph (4) of the same Law regarding negligent driving that caused an accident with a fatality, and Article 312 regarding drivers who were involved in an accident but did not stop, did not provide assistance, or did not report the incident to the police. This indictment is prepared alternatively to provide space for the judge to determine the article that best suits the evidence presented at trial.

The chronology of the incident as outlined in the indictment and corroborated by various witness statements states that the accident occurred on October 27, 2024, at approximately 10:15–10:30 PM WIB in the area of Jalan Kolonel Sugiono towards Jalan Kakap, South Cilacap. The incident involved a white Mitsubishi Lancer vehicle with license plate number R-1782-AT—which was previously registered with plate number R-7485-PB—and a Honda CB150R motorcycle with license plate number R-3719-UN ridden by Dimas Ade Rinaldi. The collision

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<sup>12</sup>Soekanto, S., & Mamudji, S. (2015). Normative legal research: A brief review. Rajawali Pers.

resulted in the victim suffering serious injuries in the form of a broken neck and a broken right femur, so he had to be referred to Dr. Sardjito General Hospital and treated for approximately 53 days until he finally died on December 20, 2024. The witnesses generally provided consistent statements regarding the sound of the impact, the car's speed which was considered high and traveling in a zigzag manner, the license plate that fell at the location, and the fact that the car did not stop after the collision, thus raising strong suspicions of elements of failure to stop the vehicle or a hit-and-run.

During the trial, the defendant admitted several important facts, including that he was driving the Lancer on the night of the incident after consuming a small bottle of the traditional alcoholic beverage "ciu." The defendant stated that he felt the impact but admitted that he did not realize that the person he hit was a person, so he continued his journey home, claiming that he did not realize the accident had occurred. He also admitted that the vehicle he was using was actually still in good condition even though the steering wheel pulled slightly to the left, and admitted that he did not have a driver's license (SIM). In addition, the defendant stated that he had provided a number of medical expenses and compensation to the victim's family, including medical expenses of Rp. 25,000,000 and other assistance after the victim's death, although no formal settlement had been reached. The defendant also expressed regret and admitted that alcohol consumption had impaired his concentration while driving.

The evidence in the trial was strengthened by the testimony of witnesses, including Eko Purwanto, Sumaryanto, Priska Hernani Astari as the victim's family, Diah Prihatin, and police officer witness Abdillah. The witnesses testified about the sound of the impact, the high speed of the vehicle, the car that did not stop after the accident, the discovery of the vehicle's license plate at the location, to the process of securing the car which was later found in the boarding house area related to the defendant. The public prosecutor also submitted evidence in the form of a Mitsubishi Lancer R-1782-AT unit with the STNK, a Honda CB150R R-3719-UN unit with the STNK, and a Class C driver's license in the name of the victim Dimas Ade Rinaldi, all of which were acknowledged by both the witnesses and the defendant.

Based on the evidence, the Public Prosecutor demanded that the defendant be sentenced to five years in prison and a fine of Rp5,000,000, with the provision that if the fine is not paid, it will be replaced with a six-month prison sentence. In addition, the prosecutor requested that the evidence be returned to the entitled parties, namely the motorcycle and its accessories to the victim's family and the Lancer car to the defendant. The court costs in this case are set at Rp2,500.

2. Normative Basis of Article 311 Paragraph (5) of Law No. 22 of 2009

The normative basis for criminal penalties for the act of driving a motor vehicle in a dangerous manner resulting in the death of another person can be found in Article 311 of Law Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ). This article strictly regulates the criminal liability of any driver who intentionally drives a motor vehicle in a manner or condition that endangers life or property. Paragraph (5) specifically contains the most severe criminal provisions, namely if the act results in the death of another person, the perpetrator can be punished with a maximum prison sentence of twelve years. This regulation shows that the law makers take seriously the fatal risks resulting from irresponsible driving behavior, so that the element of intent (*dolus*) in dangerous driving is made the point of emphasis in sentencing.

Systematically, Article 311 Paragraph (5) of the LLAJ Law is an expansion of the concept of *schuld* in criminal law because it emphasizes intent in dangerous actions, not merely negligence (*culpa*) as regulated in Article 310 of the LLAJ Law. This fundamental difference is important in assessing the degree of the perpetrator's fault, where Article 311 targets behavior that is considered more serious, because the driver consciously knows that his actions can cause danger to the lives of others but still does it. This norm also functions as a preventive instrument to reduce the number of traffic accidents that result in loss of life, in line with the objective of criminal law to protect the legal interests of society, especially the safety of life on the highway.

In addition, Article 311 Paragraph (5) has an important position in the criminal justice system because it provides a basis for a heavier sentence than the crime of driving due to negligence. This is evident in the case of *Defi Antonius Lumenon*, where the panel of judges used Article 311 Paragraph (5) as the basis for proving that the element of intent in driving dangerously had been fulfilled, so that a prison sentence was appropriate. This normative basis emphasizes that traffic crimes are not only a matter of administrative violations, but are crimes that contain the potential for serious danger to public safety. Thus, Article 311 Paragraph (5) of Law No. 22 of 2009 is a legal norm that provides strong legitimacy for judges in imposing sentences on perpetrators who drive motor vehicles intentionally in a dangerous manner resulting in death.

If in this case the consequences are more serious, then this norm can be the basis for alternative punishment with a heavier threat. Article 311 paragraph (5) of the Traffic and Road Transportation Law stipulates that drivers who "intentionally drive a motorized vehicle in a way that endangers life or property and results in the death of another person" can be sentenced to a maximum of 12 years. This norm requires several elements that must be proven, namely:

- a. The element of intent (*dolus*) in harmful actions



The element of intent in Article 311 does not require a direct intent to harm or kill the victim. Criminal law doctrine states that intent in the form of *dolus eventualis* is sufficient, that is, when the perpetrator is aware of the potential harm of their actions but chooses to continue with them.

In this case, the element of intent is proven through the following things:

- 1) The defendant admitted that he consumed a small bottle of the traditional alcoholic beverage "ciu" before driving. Alcohol consumption is legally recognized as a factor that can reduce concentration and increase the risk of accidents, so driving after drinking alcohol demonstrates an awareness of the risks.
- 2) The zigzag maneuvers of the vehicle and the high speed as described by witnesses Eko Purwanto and Sumaryanto showed that the defendant did not control his vehicle well, thus endangering other road users.

All these facts show that the defendant was aware of the potential danger but still drove, so the element of intent was proven.

#### b. Elements of Driving a Vehicle in a Way that Endangers the Lives of Others

This element focuses on driving behavior that has the potential to cause harm to the safety of other people.

In this case, this element can be proven through:

- 1) Unstable driving, including zigzagging and high speeds. Several witnesses stated the vehicle was accelerating and swerving before impact.
- 2) The defendant knew that the vehicle was not in perfect condition (the steering wheel was pulling to the left), but it was still used without inspection or repair.

The combination of these facts fulfills the elements of driving in a way that endangers the lives of others as referred to in the article.

#### c. Consequence Element: Another Person Dies

Article 311 paragraph (5) is the most severe formulation because it requires death as a direct result of the dangerous driving method. This element of consequence is constitutive, meaning that without the victim's death, the provisions of paragraph (5) cannot be applied and must be derived from other articles such as paragraph (4) (due to serious injury) or paragraph (3) (due to damage to property). Proof of this element is carried out through official medical evidence such as:

- 1) *Visum et Repertum*,



2) Death Certificate,

3) doctor's or forensic expert's report,

This medical document serves to confirm that the death actually occurred and provides a scientific basis for the connection between the accident and the death. The third element relates to the consequences of the defendant's actions, namely the victim's death.

Proof of this element is supported by:

1) The results of the medical examination from Dr. Sardjito General Hospital stated that the victim suffered serious injuries in the form of a broken neck and right thigh, which are fatal injuries (life-threatening injuries).

2) The victim's treatment history lasted for 53 days, which then resulted in death on December 20, 2024.

The causal relationship between the defendant's driving behavior and the victim's death was conclusively proven.

In the *a quo* decision, the Panel of Judges did not find any reason that could justify or excuse the Defendant's actions, so that criminal responsibility remains fully attached.

First, justifications such as an emergency (*noodtoestand*), a defense of necessity (*noodweer*), or a legitimate official order are irrelevant in this case. The Defendant was not in a situation that required him to drive in a dangerous manner to avoid greater danger. There is also no evidence that the Defendant was carrying out official duties or carrying out official orders. The trial facts show that the Defendant's actions of driving at high speed and not controlling his vehicle were behavioral choices that were entirely within his personal control, so there is no legal basis that can erase the unlawful nature of his actions.

Second, the Panel of Judges also rejected the existence of excuses, such as unintentional force majeure or psychological/hemodynamic disturbances that caused the Defendant to be unable to control his actions. Based on witness testimony, the post-mortem examination, and the reconstruction of facts, there is no indication that the Defendant was under duress (subjective or objective force majeure). Instead, the sequence of events shows that the Defendant was fully conscious when driving and had the ability to consider the risks. The Defendant was not under pressure or threats, and there is no evidence that his physical or psychological condition was affected in such a way that it prevented him from acting in accordance with the law.

Furthermore, the Panel of Judges also found no contributory negligence by the victim that could mitigate or eliminate criminal responsibility. The victim's

vehicle was in the correct lane and did not perform any dangerous maneuvers. Therefore, the victim's death was entirely the result of the Defendant's dangerous driving. The absence of dominant external factors strengthens the conclusion that the Defendant remains fully culpable for his actions.

With no justification or excuse, the Panel of Judges confirmed that all elements of criminal responsibility were met. This determination is consistent with the principle of no punishment without fault (*geen straf zonder schuld*), which states that a person can only be punished if they commit an unlawful act for which they are normatively accountable. Because the Defendant acted consciously and was not in a legal exceptional situation, there is no reason for the judge to remove or reduce the Defendant's criminal responsibility.

Therefore, the Panel of Judges was right in concluding that the Defendant must still be held fully responsible and sentenced to a criminal penalty in accordance with the provisions of Article 311 paragraph (5) of Law No. 22 of 2009. This decision also shows the application of the principle that protection of road user safety is a priority in traffic law, so that any dangerous driving behavior cannot be justified or exempted from the law.

### 3. The Element of Intention in the Context of Drunk Driving

In this case, the element of intent which is the core of Article 311 paragraph (5) of Law No. 22 of 2009 was proven through a series of facts revealed in court. Intention in the context of this article does not have to be a direct intention to crash or cause death, but rather includes intent with possibility (*dolus eventualis*), namely when the perpetrator is aware that his actions have the potential to cause dangerous consequences but still does it. The defendant firmly admitted that before driving on the night of the incident, he had consumed a small bottle of the traditional alcoholic drink "ciu", which according to his own admission affected his concentration and control while driving. Voluntary consumption of alcohol before driving shows that the defendant was aware of the risks, because everyone generally knows that drunk driving can endanger the safety of road users.

The element of intent is also evident in the Defendant's driving style as corroborated by the testimony of witnesses who saw the Mitsubishi Lancer he was driving at high speed, moving in a zigzag manner, and being unstable. Such driving patterns not only indicate a lack of vigilance, but also illustrate that the Defendant continued to choose to maintain a dangerous driving style even though he felt the direct impact of alcohol consumption. The fact that the Defendant did not have a driver's license further demonstrates that he was consciously driving without the required legal eligibility and formal ability, thereby increasing the level of risk he accepted and ignored.

The Defendant's admission that he felt the impact but continued his journey home also has important evidentiary value in assessing the element of intent. Even under normal circumstances, a driver who feels a severe impact should stop to assess the situation. The Defendant chose not to stop and continued his journey, an action that shows a complete disregard for the possible consequences of his driving. The excuse that he did not know that the object he hit was a human does not eliminate intent, because legally intent in *dolus eventualis* does not depend on the identity of the object, but rather on the awareness that a collision or accident could occur as a logical consequence of the dangerous action taken.

Another finding was that after the incident, the Lancer used by the Defendant was found near the boarding house associated with him with the license plate dropped at the location, strengthening the fact that the Defendant had left the scene despite being aware that something serious had happened. The Defendant's inability to control the vehicle, which he admitted to "pulling slightly to the left," combined with alcohol consumption, lack of a driver's license, high speed, and zigzag driving patterns, presented a cumulative picture that the Defendant was consciously placing other road users in a very dangerous situation.

Thus, based on the trial facts and consistent witness testimony, the Panel of Judges has a strong basis for concluding that the element of intent has been fulfilled. The intent referred to is not the intention to kill the victim, but rather the Defendant's awareness of the dangerous risk he created and acceptance of the possibility of fatal consequences. This consideration also led the judge to choose Article 311 paragraph (5) as the basis for sentencing, rather than simply Article 310 paragraph (4) concerning negligence.

From a law enforcement perspective, the application of Article 311 paragraph (5) is also important as a legal instrument to address high-risk behavior that threatens public order. In the case of Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp, the judge considered the defendant's actions not merely ordinary negligence, but rather an act that clearly endangered the lives of others. This firm law enforcement sends a strong signal that the state protects the public from reckless drivers, including those who drive under the influence of alcohol. Thus, the application of this article functions as general prevention, namely preventing similar cases from occurring through the fear of firm and real legal sanctions.

In the context of victim protection, the application of Article 311 Paragraph (5) also has important value as a form of state recognition of the rights of the community to feel safe when using road facilities. The death of a victim due to a drunk driver not only causes loss to the victim's family, but also creates broad psychological and social impacts. By using heavier criminal provisions, judges

want to ensure that acts that take the life of another person are not considered trivial, and provide balanced justice for the victim's family and society. This approach is in line with the principle of community protection (social defense theory), which emphasizes the need for the state to protect citizens from dangerous behavior.

From the perspective of Pancasila justice, the application of this article reflects the embodiment of the values in the second and fifth principles. The second principle emphasizes respect for human dignity, including the right to safety and life, so the state is obliged to provide legal protection against serious threats such as drunk driving. Meanwhile, the fifth principle reflects the importance of social justice for all Indonesian people, which in this context is realized through proportional sentencing decisions and provides a balance between the interests of the perpetrator, the victim, and the wider community. Thus, the application of Article 311 paragraph (5) is not merely the enforcement of legal norms, but also a manifestation of moral values and social justice that form the basis of national law.

Furthermore, the implementation of this article is relevant as part of a national strategy to reduce the number of traffic fatalities that continues to increase every year. Accident data shows that drunk driving behavior contributes significantly to deaths on the highway. Therefore, the enforcement of more severe criminal provisions such as in Article 311 Paragraph (5) serves as a preventive measure that not only protects the public from physical harm, but also reduces the potential economic burden on the state due to traffic accidents. Thus, this norm has a strategic role in national transportation safety policy.

With all these considerations in mind, it can be affirmed that the application of Article 311 Paragraph (5) by the judge in this case has high relevance to protecting the interests of society. This norm combines the aspects of legal certainty, benefit, and justice, so that it can become an effective legal instrument in maintaining order, security, and public safety in traffic.

The author argues that the application of Article 311 paragraph (5) of Law No. 22/2009 in the Cilacap District Court case is appropriate because the trial facts, namely the admission of alcohol consumption, zigzag driving patterns and high speed, not stopping after the collision, as well as the evidence and post-mortem examination cumulatively support the inference of *dolus eventualis*. The strength of this argument lies in the integration of facts and norms: the author successfully connects objective evidence (witnesses, fallen license plates, vehicle condition, victim's medical records) with the *mens rea* element, thus explaining why the judge decided to use provisions that ensnare drivers who "intentionally" endanger lives. In addition, the author uses the doctrine of causality (*conditio sine qua non* and adequate causation) consistently and places the application of the article within the framework of the purpose of punishment—preventive and

protective of the public interest—and does not rely on a single type of evidence so that the evidentiary analysis is multi-layered and comprehensive.

However, several caveats are worth raising. First, there is a significant normative ambiguity between qualifying behavior as *dolus eventualis* or as gross negligence (*culpa*). Alcohol consumption and reckless driving do not automatically prove that the defendant “accepted the possibility” of death; an admission that he felt the impact but thought he had hit a non-human object could be interpreted as lacking *mens rea* for *dolus eventualis*. Second, the standard of proof for *dolus eventualis* must be strictly defined: without a clear behavioral or statement indicating acceptance of the risk, inferences from the facts are relatively fragile. Third, post-accident aspects such as whether the defendant was fully aware of having hit a person, or the possible presence of external factors (lighting conditions, the motorcycle's position when leaving the road, or the victim's contributory negligence) have not been adequately analyzed; joint negligence may reduce the proportion of causality attributed solely to the defendant. Finally, there is a risk that using the severity clause solely for repressive effect could obscure the substantive distinction between intent and gross negligence, so enforcement policy must be balanced with administrative and non-criminal preventive measures.

Based on these considerations, the author's recommendation is to strengthen the argument with three things:

1. Explain inferentially how the combination of objective evidence meets the threshold of *dolus eventualis* (borrowing *mens rea* theory and pointing to behavioral indicators that indicate “acceptance”)
2. Conducting a comparison of the norms between Article 310 paragraph (4), Article 311 paragraph (5), and Article 312 to justify the choice of charges and explain why other alternatives are less appropriate, and
3. Incorporate a more in-depth analysis of possible common causes (road conditions, lighting, victim behavior) so that claims of causality do not appear premature.

Normatively, the author's argument is strong and relevant for the purpose of public protection, but from an academic and judicial perspective, the claim needs to be supported by a more explicit *mens rea* argument so that it is not easily challenged as an expansion of criminal penalties that crosses the line between intention and negligence.

### **3.2. The element of intent (Dolus Eventualis) in the article has been proven legally based on the facts and legal considerations of the panel of judges.**

The element of *dolus eventualis* is essentially a form of intent at the lowest level in the structure of *mens rea*, but it is still included in the category of *dolus* due to the element of risk awareness. A perpetrator who acts with *dolus eventualis* does not have a direct intention to cause a particular consequence, such as death, serious injury, or psychological harm, but he is aware that such consequences are possible, even likely, to occur as a logical consequence of his actions. Nevertheless, the perpetrator continues the action because he accepts the risk (risk approval). Thus, the nature of "intention" in *dolus eventualis* is measured by a combination of two parameters: the perpetrator's knowledge of the risk and the perpetrator's mental attitude that no longer rejects the risk. In judicial practice, judges are not sufficient to simply assess the resulting consequences, but must also trace the perpetrator's mental state through a series of objective and subjective indicators that can be rationally inferred from the sequence of actions before, during, and after the crime is committed.

The panel of judges in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp assessed that the element of intent as referred to in Article 311 paragraph (5) of the LLAJ Law had been convincingly proven through a series of legal facts revealed in court. Although the defendant did not have a direct intention (*opzet als oogmerk*) to take the victim's life, the defendant's actions fulfilled the form of conditional intent or *dolus eventualis*, namely a situation where the perpetrator was aware of the possibility of dangerous consequences but still continued his actions. In this context, the panel assessed that the defendant had known, or at least should have been aware, of the fatal risks of his actions in driving a car while drunk, at high speed, and in a zigzag manner on public roads at night.

The crucial fact that formed the basis for the finding of *dolus eventualis* was the defendant's admission that he had consumed a small bottle of *ciu* before driving. This admission was corroborated by the defendant's own statement that his concentration was impaired by the alcohol. Therefore, the defendant's decision to continue driving after consuming alcohol demonstrated prior awareness that his actions had the potential to endanger other road users. The judge considered that intoxication was not a passive factor, but a conscious choice that resulted in the defendant's loss of ability to drive safely. This act was sufficient to demonstrate the deliberate acceptance of risk (*bewuste aanvaarding*), which is the main characteristic of *dolus eventualis*.

In addition to being intoxicated, the defendant's driving pattern also demonstrated a conscious disregard for the risks. Witnesses consistently testified that the defendant's car was traveling at high speed, zigzagging, and even making a loud banging noise before continuing on its journey. This testimony demonstrates that the defendant was clearly risking the safety of other road

users. When dangerous driving behavior is committed by someone who is aware that they are impaired by alcohol, the act can no longer be classified as negligence (*culpa*), but rather as intentional, accepting the risk of fatal consequences.

The judge's considerations were further strengthened when the defendant stated that he did feel the impact at the time of the incident, but chose to continue his journey without stopping. The defendant's reason that he did not know that the person he hit was a human being was not accepted by the panel because the incident occurred on a public road that was clearly used by other drivers. Under the doctrine of *dolus eventualis*, awareness that an impact had occurred is sufficient to give rise to a legal obligation to stop the vehicle and check the situation. The decision to continue his journey reflected the defendant's acceptance of the possibility of serious consequences. This attitude strengthens the conclusion that the element of intent in Article 311 paragraph (5) has been fulfilled.

The panel of judges also considered the clear causal link between the defendant's driving and the victim's death. The violent impact caused the victim to suffer a broken neck and a fractured right femur, which ultimately led to his death after 53 days of intensive care. This incident demonstrated that the defendant's perceived risk was not merely theoretical, but actually manifested itself in the most fatal of consequences. In the context of *dolus eventualis*, the fact that the risk was understood but still ignored provides a strong basis for a judgment of intent.

Through an integrated analysis of the drunken condition, dangerous driving patterns, the defendant's attitude after the accident, and the strong causal relationship between the act and the result, the panel of judges correctly concluded that the defendant had fulfilled the element of intent in the form of *dolus eventualis*. Therefore, the application of Article 311 paragraph (5) of the LLAJ Law in this case is not only normatively valid, but also proportional from the perspective of legal protection for public safety on the highway.

From the author's perspective, the panel of judges' considerations in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp regarding the fulfillment of the element of intent in Article 311 paragraph (5) of the LLAJ Law are appropriate and have a strong legal basis. The panel did not solely base its conclusion on the presence or absence of the defendant's direct intent, but rather used an approach that is more in accordance with the characteristics of traffic crimes, namely the concept of *dolus eventualis*. In this context, the author is of the opinion that looking at the entire series of facts revealed in the trial, the defendant's actions do indeed show that he consciously accepted the risk of fatal consequences, so that the element of intent has been fulfilled based on rational and objective legal construction.



The author also agrees with the panel of judges that the application of Article 311 paragraph (5) is not only normatively valid, but also relevant from a public protection perspective. Traffic is a public social space that demands a high standard of caution. When someone consciously places another person in mortal danger through a controllable action, then criminal law should apply a heavier standard of responsibility. The use of Article 311 paragraph (5) in this case shows that criminal law not only punishes the consequences, but also the conscious behavior that precedes it.

### **3.3. The sanctions imposed reflect the values of justice, legal effectiveness, and are in line with the principle of protecting life from the perspective of positive law and Islamic law (Jarimah).**

The criminal sanctions imposed by the Panel of Judges in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp show that criminal punishment is not only intended as retribution, but also as an instrument to uphold justice, guarantee the effectiveness of the law, and protect fundamental rights in the form of safety of life. In the context of positive law, Article 311 paragraph (5) of Law No. 22 of 2009 emphasizes that the act of driving in a dangerous manner resulting in death is a criminal act with a serious level of error, considering the existence of a form of conditional intent (*dolus eventualis*). Therefore, the imprisonment and fine imposed on the defendant are a concrete form of state protection for public safety on the highway, as well as a form of accountability for the fatal risks consciously accepted by the perpetrator.

The panel of judges sentenced the defendant to prison after considering the balance between retributive justice and preventive justice. The retributive element is reflected in the perpetrator's obligation to be accountable for the consequences of the victim's life, while the preventive element is evident in the aim of creating a deterrent effect on the public to discourage drunk or unsafe driving. Proportionate sentencing is important to maintain public trust in law enforcement, particularly in the field of traffic, which is a public safety crime. In this case, the judge's decision has fulfilled the principle of deterrence by conveying the message that serious traffic violations cannot be tolerated, especially when they are related to life safety.

From an Islamic legal perspective, the defendant's actions can be categorized as *jarimah* related to the violation of the right to life (*ḥifẓ al-nafs*), one of the main objectives of *maqāṣid al-syarī'ah*. Drunk driving is a form of gross negligence that approaches the element of intent because the perpetrator consciously places himself in a state of being unable to control his actions, even though he does not have a direct intention to kill. In Islamic jurisprudence, such actions can be equated with *qatl al-khaṭa' al-muqārib li al-'amd* (negligent murder that approaches intent), which in principle still demands serious accountability. This

shows that criminalization in positive law is in line with the Islamic principle that places the protection of life as the highest priority in every legal action.

Furthermore, the application of criminal sanctions in this case aligns with the concept of *ta'zir* in Islamic law, namely, punishments imposed by the authorities to maintain order and prevent the recurrence of acts that harm the public interest. Drunk driving is an act that puts many parties at risk and therefore deserves a severe *ta'zir* sanction. Therefore, the prison sentence imposed by the judge can be seen as part of *siyāsah shar'iyah* efforts, namely legal policies established by the state to realize the public interest and prevent *mafsadat* (harm).

From a substantive justice perspective, this verdict also considers moral, social, and humanitarian aspects. Although the defendant provided assistance to the victim's family, the panel of judges concluded that this effort did not absolve him of criminal responsibility, as the consequence was the loss of life. This principle aligns with the principle that human death cannot be measured solely by material compensation. Therefore, the sentence imposed still reflects the values of justice for the victim, the victim's family, and the wider community.

The criminal sanctions in this ruling fulfill three main dimensions: first, they reflect the value of justice because they are adjusted to the level of error and the consequences; second, they provide a deterrent effect that strengthens the effectiveness of the law in preventing fatal traffic accidents; and third, they align with the principle of protecting life in both positive and Islamic law, which places human safety as the highest goal of law enforcement. This ruling is therefore not only legally valid but also morally just and relevant in efforts to maintain public safety on the roads.

#### **4. Conclusion**

1. KconstructionJuridicalChapter311 Verse (5)UU no. 22Year2009 Applied In Cases Of Drunk Drivers Causing Death, As Reflected InCilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp: The legal construction of Article 311 paragraph (5) of the LLAJ Law has been applied appropriately by the Panel of Judges in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp to assess the criminal liability of a drunk driver who causes death. The element of “driving a motor vehicle in a dangerous manner resulting in the death of another person” is proven by the fact that the defendant was driving while drunk, traveling at high speed, moving in a zigzag manner, and continuing the journey after the collision occurred. This behavior indicates intent in the form of *dolus eventualis*, where the defendant was aware of the fatal risk but still accepted and continued his actions. The clear causal relationship between the defendant’s actions and the victim’s death strengthens the application of this norm. Thus, Article 311 paragraph (5) is normatively and factually relevant to ensnare the

defendant's actions, while also reflecting legal protection for public safety on the highway. 2. Unsur The Intention (*Dolus Eventualis*) in the Article was Proven Legally Based on the Facts and Legal Considerations of the Panel of Judges: Based on all the trial facts and the panel of judges' considerations in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp, the element of intent in the form of *dolus eventualis* was convincingly proven. The defendant consciously consumed alcohol, knowing that his concentration was decreasing, but still chose to drive at high speed and zigzag on public roads at night. This high-risk action shows that the defendant was aware of the possibility of fatal consequences but continued his actions. The defendant's admission that he felt the impact and then continued his journey shows a conscious acceptance of the risk (*bewuste aanvaarding*). The causal relationship between the defendant's driving style and the victim's death further strengthens that the risk he was aware of actually occurred. Thus, the panel of judges correctly concluded that the element of intent as referred to in Article 311 paragraph (5) of the LLAJ Law has been legally fulfilled. 3. The sanctions imposed reflect the values of justice, legal effectiveness, and are in line with the principle of protecting life from the perspective of positive law and Islamic law (*Jarimah*): The criminal sanctions in the Cilacap District Court Decision No. 71/Pid.Sus/2025/PN Clp reflect justice, effectiveness, and the protection of life. In positive law, the application of Article 311 paragraph (5) shows that the state prioritizes the safety of life, because drunk drivers are considered to act with *dolus eventualis* and therefore deserve to be held responsible for the fatal consequences they cause. This decision also provides a deterrent effect and a clear message that drunk driving is a serious violation. This act falls under the category of *ta'zīr*, a crime that results in loss of life through gross negligence. The imposition of *ta'zīr* punishment is in line with the *maqāṣid al-syarī'ah* (law of the sharia), particularly the protection of the soul (*ḥifẓ al-nafs*), so strict punishment is considered mandatory to maintain public safety. The sanctions imposed by the judge have fulfilled substantive justice, effective law enforcement, and are in line with the principle of life protection in both legal systems.

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