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Legal Review Implementation Of The No-Fault Compensation Principle Towards The Guarantee Of Road Traffic Accident Victims

Sandi Ibrahim[1) & Jawade Hafidz[2)]

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

[2)] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: jawade@unissula.ac.id

Abstract. *Law No. 34/1964 and Government Regulation No. 18/1965 stipulate the scope of legal entities eligible for compensation when they become victims of road traffic accidents. The scope of insurance for road traffic accident victims is as regulated in Law No. 34/1964 and Government Regulation No. 18/1965.The implementing regulations are as follows: Article 4 paragraph (1) of Law No. 34/1964 stipulates that "Every person who becomes a victim of death or becomes permanently disabled as a result of an accident caused by a road traffic vehicle as referred to in Article 1, will be compensated to him or his heirs in the amount determined based on Government Regulation." If interpreted, then the accident victims who will be given funds are every person who dies or is permanently disabled as a result of an accident caused by road traffic transportation equipment. ExplanationArticle 4 paragraph (1) of Law No. 34/1964 stipulates that "Those who receive coverage under this law are those who are on the road outside the vehicle that caused the accident. However, if the victim has already received coverage under Law No. 33 of 1964 concerning the Mandatory Passenger Accident Insurance Fund, coverage is only provided once, namely by the mandatory passenger accident insurance fund referred to in the law." If interpreted, then the accident victim who receives insurance is every person who is a victim of an accident who is outside the means of transportation that caused/inflicted the accident. Article 10 paragraph (1) of PP No. 18/1965 stipulates that "Any person who is outside the road traffic transportation vehicle which causes an accident, who is a victim as a result of an accident from the use of said road traffic transportation vehicle, is entitled to a payment from the Road Traffic Accident Fund, except in the cases listed in Article 13." If interpreted, then accident victims who are in the vehicle that causes/inflicts the accident are not guaranteed or will not be given compensation. Taking into account the provisions as mentioned above, there is a difference in the compensation* *regime between the body of Article 4 paragraph (1) of Law No. 34/1964 and the Explanation of Article 4 paragraph (1) of Law No. 34/1964 and Article 10 paragraph (1) of PP No. 18/1965, where Article 4 paragraph (1) of Law No. 34/1964 adheres to the principle of no-fault compensation while the Explanation of Article 4 paragraph (1) of Law No. 34/1964 and Article 10 paragraph (1) of PP No. 18/1965 adheres to the principle of fault compensation. Therefore, it is necessary to study the direction of the compensation or guarantee regime for victims of traffic accidents as regulated in the Road Traffic Accident Fund Program and the efforts that need to be made by PT Jasa Raharja as a company mandated by the government to implement basic protection for victims of road traffic accidents in the event that there are differences in the compensation regime between the intended laws and regulations.*

Keywords: *Accident; Compensation; Principle; Road; Traffic.*

1. Introduction

The increase in public mobility and the growth of motorization in Indonesia are suspected to be the cause of the increase in the number and fatality rate of traffic accidents. Based on Article 1, number 24 of Law Number 22 of 2009 concerning Traffic and Road Transportation, as amended in part with the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which has been stipulated by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law, (hereinafter referred to as "Law 22/2009"), a Traffic Accident is an unexpected and unintentional incident on the Road involving a Vehicle with or without other Road Users which results in human casualties and/or property losses.

When grouped, several factors that cause traffic accidents are:[1]

1. Human factors include the behavior, skills, physical condition, and mental state of road users, which can affect driving safety. Examples of behaviors that can lead to traffic accidents include driving while drunk, drowsy, or stressed, violating traffic signs, using a cell phone while driving, not wearing a seatbelt or helmet, and others.

2. Vehicle factors relate to the technical and operational condition of vehicles used in traffic. Some examples of vehicle conditions that can cause traffic accidents include malfunctioning brakes, bald tires, dead lights, engine problems, and so on.

3. Road factors include the design, construction, maintenance, and operation of roads, which can affect traffic safety. Some examples of road conditions that can cause traffic accidents include slippery, potholed, or damaged roads, a lack of signs or road markings, narrow, winding, or hilly roads, and others.

4. Environmental factors include natural and social conditions around the road that can affect traffic safety. Examples of environmental conditions that can cause traffic accidents include bad weather, such as rain, fog, or strong winds; noise, pollution, or crowds that distract drivers; the presence of animals, workers, or children running in the road; and so on.

The factors causing these accidents include accidents involving public passenger transportation, whether on land, sea, or air, that result in death, injury, and/or disability. According to Article 240 of Law 22/2009, "Traffic Accident Victims are entitled to:

a. *assistance and care from the party responsible for the occurrence of the Traffic Accident and/or the Government;*

b. *compensation from the party responsible for the occurrence of a traffic accident; and*

c. *Traffic Accident Compensation from Insurance Companies*."

The provisions in Law 22/2009 also reaffirm the existence of PT Jasa Raharja as a company appointed by the government to implement 2 (two) laws and regulations related to guarantees for accident victims, namely:

1. Law Number 33 of 1964 concerning the Compulsory Passenger Accident Insurance Fund (hereinafter referred to as "Law No. 33/1964") in conjunction with Government Regulation Number 17 of 1965 concerning Provisions for the Implementation of the Compulsory Passenger Accident Insurance Fund (hereinafter referred to as "PP No. 17/1965"); and

2. Law Number 34 of 1964 concerning Road Traffic Accident Funds (hereinafter referred to as "Law No. 34/1964") in conjunction with Government Regulation Number 18 of 1965 concerning Provisions for the Implementation of Road Traffic Accident Funds (hereinafter referred to as "PP No. 18/1965").

2. Research Methods

This research focuses on efforts to research and review the provisions contained in laws and regulations as well as various literature such as books, journals, scientific reports, scientific works and other sources related to the problems discussed in this research.

3. Results and Discussion

3.1. Guarantee Principles Of Road Traffic Accident Fund Program

In relation to the accident, Indonesian positive law stipulates a regulation governing the Road Traffic Accident Fund, namely Law No. 34/1964. Law No. 34/1964 then delegated the authority to establish implementing regulations, which were then implemented in Government Regulation No. 18/1965.

Based on Article 4 paragraph (1) of Law No. 34/1964, it is known that the scope of the guarantee is as follows: "Any person who is a victim of death or permanent

[1]https://www.chubb.com/id-id/articles/personal/4-faktor-utama-penyebab-kecelakaan-lalu-lintas.html (accessed on October 11, 2025)

disability due to an accident caused by a road traffic vehicle as referred to in Article 1, the fund will provide compensation to him or his heirs in the amount determined based on Government Regulation."

The provisions of this article emphasize that victims in both vehicles will be compensated, regardless of the vehicle causing the accident or the victim's vehicle. Consequently, all victims will be compensated, and this provision clearly adheres to the principle of no-fault compensation.[2]

Then in the Elucidation to Article 4 paragraph (1) of Law No.34/1964 states:"*Those who receive coverage under this law are those who are on the road outside the vehicle causing the accident. However, if the victim has already received coverage under Law No. 33 of 1964 concerning the Mandatory Passenger Accident Insurance Fund, coverage is only provided once, namely by the mandatory passenger accident insurance fund referred to in the law.*"

Furthermore, the guarantee provisions in the Explanation are reaffirmed in Article 10 of PP No. 18/1965 which states, "Any person who is outside the road traffic transportation means that causes an accident, who is a victim as a result of an accident from the use of the road traffic transportation means as such, is entitled to a payment from the Road Traffic Accident Fund, except in the cases listed in Article 13."

The provisions of Article 10 of PP No. 18/1965 in conjunction with the Explanation of Article 4 paragraph (1) of Law No. 34/1964 differentiate between the causal vehicle and the victim vehicle. Compensation is given to victims in the case of a victim vehicle, but victims in the case of a causal vehicle are not given any. The consequence is that there is a distinction between victims who are given compensation and those who do not or adhere to the principle of no-fault compensation.[3]

The provisions in Government Regulation No. 18/1965 cannot be separated from the provisions of Law No. 34/1964. This is because, if we look at the Considerations of Government Regulation No. 18/1965, it is expressly stated that "it is necessary to immediately establish implementing provisions for Law No. 34 of 1964 concerning Road Traffic Accident Funds."

Based on the interpretation of argumentum a contrario, it can be seen that every victim who is outside the means of transportation that causes the accident is

[2]ibid, p. 27
[3]*ibid*

guaranteed compensation, whereas every victim who is inside the means of transportation that causes the accident is not guaranteed compensation, or:

3.2. Implementation Of The No-Fault Compensation Principle In The Road Traffic Accident Fund Program

The application of the no fault-compensation principle in the Road Traffic Accident Fund Program is more relevant when compared to the fault-compensation principle, this can be seen from:

1. Philosophical aspects of the formation of Law No. 34/1964

Philosophically, the establishment of Law No. 34/1964 is essentially to provide basic protection to every citizen from the risk of accidents. In this case, the spirit of basic protection is the forerunner of protection without regard to any element of fault on the part of the victim. This is as explained in the General Explanation of Part I.1 of Law No. 34/1964, which states "According to statistics from the Traffic Directorate of the Department of the Police Force, from 1955 to 1963 in Indonesia there were 136,490 traffic accidents, which resulted in 13,135 deaths, 87,675 people suffering injuries and hundreds of millions of rupiah in material losses. Basically, every citizen should be protected against losses suffered due to such risks. This is a social thought. Because the current economic and financial conditions do not allow for all the consequences of providing social security to be accommodated by the Government, it is necessary for this effort to be carried out through mutual cooperation."

2. Sociological Aspects between PT Jasa Raharja and the Community

The implementation of the fault compensation principle gives rise to an assessmentdiscrimination and injustice from the community's perspective. This is based on the understanding that in reality, no member of society intentionally makes himself a victim. This is inseparable from the interpretation so far of Article 4 paragraph (1) of Law No. 34/1964 in conjunction with Article 10 paragraph (1) of Government Regulation No. 18/1965, which causes the scope of compensation payments to be limited to:

a. everyone who is outside of road traffic transportation equipmentwhich causes accidents;

b. every person who becomes a victim of an accident resulting from the use of road traffic transportation equipment; and

c. where the victim has not received a guarantee of compensation payments based on Law Number 33 of 1964 concerning the Compulsory Passenger Accident Insurance Fund.

This interpretation means that Jasa Raharja's compensation payments do not apply to accidents under certain conditions, such as single or multiple accidents, or those involving two or more motor vehicles. This situation is considered discriminatory by the public, as not all accident victims can receive legal certainty regarding compensation from Jasa Raharja.[4]

3. Guarantees and compensation payments have a priority position over the driver's fault element.

Compensation payments are essentially prioritized over proving fault in an accident or traffic violation. This is stipulated in Article 14 of Government Regulation No. 18/1965, which states: *"The owner/operator of a motor vehicle is obliged to reimburse the Company for the amount of funds that have been paid by the Company to the victim/heir, if the accident is caused by:*

a. the vehicle is driven by a person who does not have a valid driving license;

b. the driver is affected by illness, fatigue, drinking something containing alcohol or drugs or by other things;

c. other acts which constitute deliberate violations of road traffic regulations;

*d. does not fulfill its obligations according to/based on Article paragraph (1)*jo, article 3 paragraphs (2) and (3) of this Government Regulation;

unless the owner/operator of the motor vehicle concerned can prove that the accident occurred outside of his responsibility or outside of his fault."

4. Payment of compensation does not reduce the responsibility of the party who may be blamed, either criminally or civilly.

Even if there is an element of fault on the part of the parties responsible for the accident, compensation payments are a separate element and should still be made to the victim or their heirs. Furthermore, the compensation paid does not eliminate the legal responsibility of the guilty parties under either criminal or civil law. This is as stipulated in Article 15 of Government Regulation No. 18/1965,

[4]Gadjah Mada University, 2023, Legal Study on Reinterpreting the Provisions on the Scope of Road Traffic Accident Fund Guarantees, Yogyakarta, p. 8

which reads:*"Payment of funds does not reduce the responsibility of the party who can be blamed under criminal or civil law for the accident that occurred.*."

Based on the explanation above, the implementation of the no-fault compensation principle will provide justice and benefits for road traffic accident victims. Furthermore, it will provide basic protection for all accident victims, regardless of their location in the vehicle at the time of the accident. This will also restore the original purpose or background of the Road Traffic Accident Fund Program, which is to provide benefits to the community.

3.3. Efforts To Create Legal Certainty In The Implementation Of The Guarantee System In The Road Traffic Accident Fund Program

Referring to the previous description, the Road Traffic Accident Fund Program since its enactment has been administered by PT Jasa Raharja as appointed, although it has undergone several changes in legal entity form. In an effort to ensure legal certainty in the implementation of the guarantee system, particularly for the implementation of the no fault compensation system in the implementation of basic protection for accident victims in the Road Traffic Accident Fund Program, several efforts that can be made are as follows:

1. Submitting changes or replacements to Law No. 34/1964, particularly to the Explanation of Law No. 34/1964, mutatis mutandis the provisions in PP No. 18/1965 which are in conflict with the norms of Law No. 34/1964 are negated in their validity.

The main focus in terms of changes or replacements to Law No. 34/1964 is related to the Explanation of Article 4 paragraph (1) of Law No. 34/1964 regardless of whether changes will also be made to several other provisions in line with legal needs and developments. The existence of norms in the Explanation of Article 4 paragraph (1) of Law No. 34/1964 which adheres to the principle of fault compensation so that accident coverage is specifically only intended for victims with the qualification of death or permanent disability who are on the road outside the means of transportation that causes the accident, while Article 4 paragraph (1) of Law No. 34/1964 provides coverage to all victims with the qualification of death or permanent disability, whether inside or outside the motorized vehicle that causes the accident, compensation must be provided to victims with permanent disability or to the heirs of the deceased victim.

Changes or replacements to the Explanation of Article 4 paragraph (1) of Law No. 34/1964 can be in the form of changing or replacing the norm to "Sufficiently clear" so that the meaning of Article 4 paragraph (1) will refer entirely to the norm of the body of Article 4 paragraph (1). If this is done, it will also have an impact on adjustments in PP No. 18/1965, especially the norm in Article 10 paragraph (1) which has standardized the Explanation of Article 4 paragraph (1) of Law No. 34/1964 where only people who are outside the road traffic transportation vehicle that causes an accident will receive compensation.

By carrying out these efforts, the Road Traffic Accident Fund Program fully applies the no-fault compensation principle where:

a. Article 4 paragraph (1) of Law No. 34/1964 should read:

"Any person who becomes a victim of death or permanent disability, meaning a disability that cannot be restored to its original condition, as a result of an accident caused by a motor vehicle and/or train, then the funds collected from mandatory donations will provide compensation to the victim of permanent disability or to the heirs of the deceased victim in the amount determined based on Government Regulation."

b. Article 10 paragraph (1) of PP 18/1965 should read:

"Any person who is a victim of an accident involving a motor vehicle and/or train is entitled to a payment from the Road Traffic Accident Fund, except in the cases listed in Article 13."[5]

2. Proposing changes or replacements to PP No. 18/1965 to adapt to current conditions and the legal needs of society, including straightening out the implementation of the norms of Law No. 34/1964 in PP 18/1965 which are not in accordance with the spirit of Law 34/1964.

This effort will have a high impact on PT Jasa Raharja because by changing or replacing PP No. 18/1965, the provision of compensation will be entirely based on the regulations in the PP, this is by remembering the norm in Article 4 paragraph (1) of Law No. 34/1964 which states "…….the funds will cause losses to him or his heirs in the amount determined based on Government Regulation."

4. Conclusion

That the provisions of Article 4 paragraph (1) of Law No. 34/1964, the Explanation of Article 4 paragraph (1) of Law No. 34/1964 and Article 10 (1) of PP No. 18/1965 adhere to different guarantee principles in the implementation of the Road Traffic Accident Fund Program. referring to the general explanation of the formation of Law No. 34/1964, that the guarantee principle mandated in the Road Traffic Accident Fund Program is no-fault compensation and fulfillssocial security principles. This is also supported by referring to the statutory provisions governing

[5]ibid, p. 14

the formation of laws and regulations. As an effort to ensure legal certainty in the implementation of the guarantee system in the Road Traffic Accident Fund Program, the following efforts can be made: submitting changes or replacements to Law No. 34/1964, particularly to the Explanation of Law No. 34/1964, mutatis mutandis the provisions in PP No. 18/1965 which are in conflict with the norms of Law No. 34/1964 are negated in their validity; or submit changes or replacements to PP No. 18/1965 to adapt to current conditions and the legal needs of society, including straightening out the implementation of the norms of Law No. 34/1964 in PP 18/1965 which are not in accordance with the spirit of Law 34/1964.

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