



Law Enforcement of Single Traffic Accidents Causing Death and Injury of Passengers

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ABSTRACT

The high number of accidents in Indonesia is one of the impacts of the lack of awareness of road users and road transportation providers in maintaining traffic order and road transportation security. Services that are safe, secure, orderly, smooth, and integrated with other modes of transportation can boost the national economy, advance public welfare, strengthen national unity, and be able to uphold the dignity of the nation. This study aims to analyze law enforcement by police officers in single traffic accidents that cause passengers to die and the responsibilities of drivers and the Otobus Company (PO) to victims. The method uses normative legal research with a statutory approach and the concept of law enforcement. The research shows that the maximum punishment imposed on the perpetrators of traffic crimes normatively can be explained by the relatively low maximum punishment ranging from one year to five years and until now the legal basis for capturing the perpetrators of traffic crimes still depends on the Criminal Code inherited from the Dutch Colonial Government. Law enforcement by police officers with the investigation and investigation of criminal cases in the case of a single accident experienced by the suspect on the toll road ensnares the Road Traffic and Transportation Law (LLAJ Law). Drivers and POs are responsible for victims by providing compensation to accident victims following the LLAJ Law by not removing or reducing criminal liability.

A. INTRODUCTION

Traffic and public transportation have a strategic role in supporting national development, in the context of efforts to promote public welfare, following the laws of the Republic of Indonesia (Rauf et al., 2021). As part of the national transportation system, public transport must be developed and has the potential to play a role in achieving safety, welfare, traffic order, and public transport can support economic development and the development of science and technology, regional autonomy, and accountability, and can govern the country. Public transport is considered to have a very important role, the emergence of public transport makes the economic growth of a country dependent on the availability of existing transportation at the national and regional levels (Mariyam & Suryoutomo, 2021). Almost every day, everyone in the world needs public



transportation, which has now turned into a basic necessity.

The importance of public transportation for the people of Indonesia is due to several factors, among others, the geographical condition of Indonesia which consists of thousands of small and large islands, waters consisting of mostly seas, rivers, and lakes that allow transportation to be carried out by land (Rosita, 2020). Population growth and the increasing population of Indonesia have increased the number of means of transportation, which is triggered by the interest in purchasing motorized vehicles, such as cars or motorbikes, which can cause traffic in all major cities in Indonesia to experience severe congestion which can create boredom when traveling (Kurniati, 2020).

The important role of transportation, especially land transportation, has been regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) to ensure efficient, smooth, orderly, and safe traffic as a guarantor of the smooth running of several activities in realizing the welfare of the community. Based on the LLAJ Law as a combination of the national transportation system that must develop its potential and function in creating a sense of security, safety, order, and smoothness in traffic and road transportation to support economic development as well as regional expansion (Bumi et al., 2022).

Transportation is a very important tool in supporting the success of development in rural, urban, and developing countries such as Indonesia (Y et al., 2021). Transportation is the activity of moving goods (cargo) and or passengers from one place to another (Shill, 2020). With the existence of transportation, it is expected to eliminate isolation and provide stimulants towards development in all fields of life, both trade, industry, and other sectors can be evenly distributed in all regions.

Community economic activities will develop if there is good transportation infrastructure and facilities for accessibility (Bimaputra, 2018). This accessibility can spur the process of interaction between regions to the most remote areas to create equitable development. In the macroeconomic framework, transportation is the backbone of the national, regional, and local economy, both in urban and rural areas. The high number of accidents in Indonesia is one of the impacts of the lack of awareness of road users and road transportation providers in maintaining traffic order and road transportation safety (Faida & Widodo, 2023). Services that are safe, secure, orderly, smooth, and integrated with other modes of transportation can boost the national economy, advance public welfare, strengthen national unity, and be able to uphold the dignity of the nation. To create order and safety of traffic and road transportation, as well as provide legal certainty for parties related to transportation services, ranging from transportation entrepreneurs, workers/drivers, to passengers, the government enacts laws governing traffic and road transportation. In its implementation, every element is expected to participate.

According to Article 1 point 24 of the LLAJ Law, a traffic accident is an unexpected and unintentional road event involving a vehicle with or without other road users that results in human casualties and/or property damage. Traffic accidents can be categorized into three parts, namely:

- 1) A minor traffic accident is an accident that causes damage to a vehicle or goods;
- 2) Moderate traffic accidents as those that result in minor injuries and damage to vehicles and goods; and
- 3) Serious traffic accidents as accidents that result in death or serious injury ([Silaban & Pase, 2021](#)).

According to the Indonesian Transportation Institute, four factors cause accidents, namely vehicle factors, road factors, human factors, and natural factors. Of these four factors, the human factor is the main factor causing the high number of traffic accidents, therefore good traffic awareness is needed for the community, especially the productive age group ([Sibarani, 2019](#)). One of the contents of the Traffic and Transportation Law is the license to drive a motor vehicle, namely Article 77 paragraph (1) of the Traffic and Transportation Law. This must be fulfilled by motor vehicle users because a driving license is a legal requirement to be able to drive a vehicle on the road. Even though there is a driver's license, negligence or other factors can cause an accident ([Auriney, 2022](#)).

In this case, the research feels the need to review and analyze law enforcement on single traffic accidents that cause passengers to die and seriously injured.

B. METHOD

This research focuses on law enforcement against single traffic accidents that cause death and serious injuries to passengers ([Susanti & Efendi, 2014](#)). Primary legal materials in this research, namely: LLAJ Law, Criminal Code, and journal articles that support this research. Secondary legal materials are research results that discuss traffic crimes. The approaches used are conceptual and statutory.

C. RESULTS AND DISCUSSION

Law Enforcement Against Single Traffic Accidents Causing Passengers Death and Serious Injuries

In implementing law enforcement, three elements must always be considered, namely:

- 1) Legal certainty that violators are prosecuted;
- 2) Expediency, from law enforcement actions carried out, can provide a preemptive effect; and
- 3) Justice, if from the side of the community victims and perpetrators feel there is a comparison between the actions and consequences received by the perpetrators and victims ([Hambali, 2020](#)).

Judging from the three principles of law enforcement, law enforcement against road traffic crimes can be said to be far from what is expected ([Sancaya & Putra, 2021](#)). As evidenced by the data presented in the previous section, the point is that in terms of legal certainty, the level of disclosure against perpetrators of traffic crimes is still very low. While in terms of expediency, there are not many preferential effects of law enforcement

carried out so far (Pangestuti & Sulisty Wahyudi, 2021). The evidence is that in society there are still many forms of road traffic crimes. Meanwhile, in terms of justice, it is still not widely felt that the judge's decision against the perpetrator of a traffic crime is felt as a manifestation of a sense of justice, both for the victim and for the general public.

In connection with this law enforcement, Soerjono Soekanto stated that the main problem in law enforcement lies in the influencing factors. These factors include:

- 1) Statutory factors;
- 2) Law enforcement factors;
- 3) Law enforcement facility factors;
- 4) Community factors; and
- 5) Cultural factors (Ali, 2012).

Law enforcement when viewed from one of the factors above, such as statutory factors, namely as follows there are various types of traffic crimes as stated earlier, if examined in the Criminal Code, it turns out that the regulation has been found, as stipulated in Article 359 which states that anyone who through his negligence causes someone to die, shall be punished with imprisonment for a maximum of five years or imprisonment for a maximum of one year (Mahendra et al., 2021). Some provisions relating to traffic offenses are normatively deficient. First, except for the articles on traffic offenses, all of them are interpretative, which may result in disparity in their application. Secondly, the criminal sanctions imposed are not severe enough to be considered unresponsive to public reaction to traffic crimes (Rauf et al., 2021). Concerning the issue of the low punishment imposed on perpetrators of traffic crimes, normatively, it can be explained that first, the maximum punishment imposed is relatively low, ranging from one year to five years.

Moreover, the alternative punishment in the form of a fine, the nominal is much lower with the development of currency value for the current conditions. Second, from the construction of articles and the threatening system. As we all understand, until now the legal basis for capturing traffic offenders still depends on the Criminal Code inherited from the Dutch Colonial Government, which has been in effect since 1918. In this Criminal Code, the criminal punishment system used is a maximum of 20 years, a general *straf* for a minimum of one day, and a special *straf* for a maximum according to each type of criminal offense (Irmawanti & Arief, 2021).

Without a special minimum sentence. With such a system, judges are given the freedom to impose the lowest possible sentence, as long as it is not less than one day. The first consequence is that judges are free to impose very light sentences. Secondly, there is a sharp disparity in similar cases.

Legal Liability for Single Traffic Accidents Causing Passengers Death and Serious Injuries

Criminal responsibility is essentially a mechanism built by criminal law to react to violations of the "agreement to reject" a certain act (Nugroho & Pujiyono, 2022). Sudarto

said that it is not enough for a person to be punished if the person has committed an act that is contrary to the law or is against the law (Wirajaya et al., 2022). So even though the act fulfills the formulation of the offense in the law and is not justified, it does not yet fulfill the requirements for imposing punishment (Hambali, 2020). For punishment, there is still a requirement for the imposition of punishment, namely that the person who commits the act has guilt or is guilty (Krisna et al., 2021). The person must be held accountable for his or her actions, or from the point of view of his or her actions, his or her actions can only be held accountable to that person.

The definition of criminal responsibility as stated by experts includes:

- 1) Simons said that the ability to be responsible can be interpreted as a psychological state in such a way that the application of a punishment, both in general and from the point of view of the person, can be justified. Furthermore, he said, a criminal offender is capable of being responsible if: First, able to know/realize that his actions are contrary to the law. Second, able to determine his/her will following that awareness;
- 2) In contrast to Simons, Van Hamel defines criminal responsibility as a normal state of psychology and skill that brings three kinds of abilities, namely first, being able to understand the meaning and real consequences of one's actions. Second, the ability to realize that the actions are contrary to the public order. Third, the ability to determine the will to act; and
- 3) Pompe provides criminal responsibility within the limits of the elements, namely the ability to think in the perpetrator that allows him to control his mind and determine his will, the perpetrator can understand the meaning and consequences of his behavior and the perpetrator can determine his will following his opinion (about the meaning and consequences of his behavior) (Sumarna, 2021).

When viewed from the opinions of the experts mentioned above, criminal responsibility is different from criminal acts. Criminal acts only refer to prohibited and threatened acts with a punishment. Whether the person who commits the act is then sentenced, depends on whether the act contains guilt. Because the principle in criminal law liability is, "no punishment if there is no fault" (*geen straf zonder schuld: actus non facit reum nisi mens sis rea*), which means that the assessment of criminal liability is aimed at the inner attitude of the perpetrator, not the assessment of his actions. (Nurfauziah & Krisnani, 2021). The exception to the principle of *actus reus* and *mens rea* is only in offenses that are *strict liability* (absolute liability), wherein such criminal offenses the element of guilt or *mens rea* does not need to be proven. (Barhamudin & Dahwir, 2021).

Criminal responsibility can generally only occur if the perpetrator is at fault, so the law must first establish a criminal act. E. Y. Kanter and S. R. Sianturi explained: that criminal responsibility leads to the criminalization of the actor if he has committed a criminal offense and fulfills the elements specified in the law (Muhammad et al., 2022). From the point of view of the occurrence of a prohibited act, a person will be held liable

for such acts if the act is unlawful and there is no nullification of the unlawful nature or justification for it. From the point of view of the ability to be held responsible, only a person who is capable of being held responsible can be held liable.

It can be concluded that guilt is a very important thing to convict someone. Without it, criminal liability will never exist. Hence, it is not surprising that in criminal law the principle, of “no punishment without fault” (*geen straf zonder schuld: actus non facit reum nisi mens sis rea*) is known. (Alviolita, 2018). The principle of fault is a fundamental principle in criminal law, so fundamental that it permeates and echoes almost all important teachings in criminal law. This principle is also not found in written law but in unwritten law which also applies in Indonesia. Fiscal criminal law does not use guilt (Wirawan, 2021). Therefore, if a person violates the law, he is punished with a fine or forfeiture. The fault is the culpability of the perpetrator of the crime because, from the point of view of society, he could have done something else if he had not wanted to commit the act (Prastiwi, 2022). A person can be said to have an error, if at the time of committing a criminal act, from the point of view of society, he can be reproached for it, namely why he committed an act that was detrimental to society even though he was able to know the meaning of the act, and therefore could and even had to avoid such an act. The conditions that must be met for a person to be convicted, namely that there is an outward act that is prohibited (*actus reus*) and there is an evil/defective inner attitude (*mens rea*) the inner attitude of the person who includes *mens rea* can be in the form of intention, recklessness, and negligence/lack of caution. (Nurfauziah & Krisnani, 2021).

From the description above, it can be concluded that the responsibility of the driver and PO for victims of traffic accidents is to provide compensation to victims of accidents as in Article 234 paragraph (1) of the LLAJ Law by not removing or reducing criminal liability. The government should control the speed of driving on the toll road by recording the time and distance traveled to enter the toll road and exit the toll road. Knowing the time and distance traveled will obtain the speed of the vehicle driver accompanied by the installation of sirens on the exit side of the toll road so that if the driver exits the toll road showing speed beyond the maximum speed, the siren will sound and the police officer on duty at the exit toll gate can secure the driver. With the many cases of accidents that cause passengers to die, it is hoped that the government can analyze whether it is because the speed exceeds the limit or because the criminal sanctions are too light.

D. CONCLUSION

Law enforcement by police officers investigating and investigating criminal cases which in the case of a single accident experienced by the suspect on the toll road, the police investigator is charged with Article 310 paragraph (3) and paragraph (4) and Article 311 paragraph (5) of the LLAJ Law. The responsibility of the driver and PO for victims of traffic accidents is to provide compensation to victims of accidents as in Article 234 paragraph (1) of the LLAJ Law by not removing or reducing criminal liability.

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