

## Criminal Action on Traffic Accident-Causing Death Case Study Decision Number 101/Pid.B/2020/PN. Cirebon

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### Abstract

*The central review of traffic regulations is to create security, safety, order, and smooth traffic on the roads. Driving a vehicle inadvertently and exceeding the maximum speed, seems to be immature behavior. Most drivers are not aware of the dangers faced when driving a car that exceeds the maximum speed. Not a few drivers commit violations. The purpose of this study is to review criminal law enforcement in terms of legislation and review accountability in cases of traffic accidents that cause the loss of people's lives in traffic accidents in the city of Semarang. This type of juridical normative research. The nature of the research uses descriptive qualitative. The data collection technique uses secondary data (decision Number 101/Pid.B/2020/PN. Cirebon). The results show that the enforcement of the criminal law regarding traffic accidents that result in the loss of people's lives still has several weaknesses and criminal liability has fulfilled the element of criminal responsibility in general.*

### Keywords

*judge's decision; negligence;  
traffic crime*



### I. Introduction

Indonesia is a legal state that has coercive legal rules for every community living in Indonesia. As a legal state, Indonesia is based on law, not just power, so in Indonesia, the legal position is the highest (rule of law). Equality before the law is one of the important principles in modern law, where it is one of the joints of the Rule of Law doctrine in developing countries such as Indonesia that this principle is used as the basis for every human being in law enforcement.

Law enforcement in modern society is not only interpreted in a narrow sense but also a broad sense, in Indonesia law enforcement is associated with the human element and the social environment. Law enforcement efforts are in line with the principles of the Unitary State of the Republic of Indonesia, namely Pancasila. The enforcement of the law is a prerequisite for a state of law, law enforcement always involves humans in it and thus will involve human behavior as well. Criminal law enforcement efforts are essentially part of law enforcement efforts and are often referred to as politics or criminal law policies which are part of law enforcement policies.

Traffic in Indonesia is regulated by laws and regulations, namely Law Number 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order, and welfare in society which need to be determined regarding prohibited and required actions. Meanwhile, the violation of these provisions is punishable by criminal sanctions. The frequent occurrence of traffic violations, both intentional and unintentional, may be due to the fact that the sanctions imposed on the perpetrators of traffic violations are too light, so it is not surprising that more and more traffic violations are occurring. The legal consequence of a traffic accident is the existence of criminal sanctions for the maker or cause of the incident and can also be accompanied by civil claims for material losses caused.

Regarding the provision of sanctions and punishments for deviant perpetrators, both crimes and violations, it is determined after the perpetrator is tried and received a decision by the judge. These penalties and sanctions are given as a form of criminal responsibility for criminal acts that have been committed. These penalties and sanctions are obtained and obtained from the long process and procedures of the applicable criminal law so that the judge's decision must be balanced with criminal responsibility for the mistakes committed by the perpetrators of criminal acts based on the principle of error as a very fundamental principle in asking for criminal responsibility against the perpetrator guilty of committing a crime.

Traffic accidents that result in death have been regulated in the provisions of the Criminal Code, in Article 338 and Article 359 of the Criminal Code. In the Criminal Code, there is no detailed mention of negligence in terms of what can cause the death of another person, as it is written in Article 359 which states "whoever due to his negligence causes the death of a person, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year". The omission referred to here is not stated in detail in what way. Does it include negligence in driving or traffic, because the provisions of the norm in Article 359 of the Criminal Code which states "Whoever by his negligence causes the death of a person, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year." The two articles cannot be applied directly to criminal acts of traffic accidents resulting in death because they are related to traffic as regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation. As the principle of *lex specialis derogate lex generalis*, namely rules that are specific override general rules.

The existence of these special rules is a consequence of the purpose of the enactment of the Traffic and Road Transportation Law as stated in the preamble to the law, in letter b, which reads, "that traffic and road transportation as part of the national transportation system must develop their potential and role. to realize security, safety, order and smooth traffic and road transportation in the context of supporting economic development and regional development."

Traffic accidents resulting in death in the special rules contained in the Traffic and Transportation Act are regulated in two categories. The first category is a regulation that penalizes the driver for his negligence in causing the death of another person and is regulated in Article 310 paragraph (4), which reads "in the event of an accident as referred to in paragraph (3) which results in the death of another person, the punishment shall be maximum imprisonment of 6 six) years and/or a maximum fine of Rp. 12,000,000.00,- (twelve million rupiah)."

The second category is the regulation regarding traffic accidents that result in death which is not an intentional homicide. However, the traffic accident occurred because the actions of the perpetrator before the accident could be known as an act that would threaten a person's life. Based on this, the perpetrator may apply Article 311 paragraph (1), which reads "everyone intentionally drives a motorized vehicle in a manner or condition that endangers life or goods, shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 3,000,000.00 (three million rupiahs)". Then in paragraph (5), it reads: "In the event that the act as referred to in paragraph (4) results in the death of another person, the perpetrator shall be sentenced to a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp. 24,000,000.00 (twenty-four million rupiah)."

With regard to traffic accidents, if someone is negligent in driving which can lead to a traffic accident leading to death, then the person's negligence can be held criminally

responsible. This is because culpa or negligence is a form of error. Simons requires two things for the culpa, namely: (1) the absence of prudence (het gemis von voorzichtigheid); and (2) inattention to possible consequences (het gemis van de voorzienbaarheid van het gevolg). Meanwhile, Van Hamel requires two things, namely: (1) the absence of the necessary estimators (het gemis van de nodige voorzichtigheid); and (2) the absence of the necessary caution (het gemis van nodige voorzichtigheid).

## II. Research Method

This research is included in the type of normative juridical research. Normative juridical research is a type of research that seeks to synchronize the applicable legal provisions in law enforcement against other legal norms or regulations, using a conceptual approach based on the opinions of legal experts. Based on this type of normative juridical research, the research approach in this thesis uses a statutory approach and a conceptual approach.

The statutory approach uses laws and regulations related to criminal law rules regarding traffic accidents that result in death, while the conceptual approach uses the theories and concepts used in this thesis which have relevance to the legal issues analyzed regarding the criminal liability of the perpetrators. The crime of traffic accidents resulting in death in terms of the provisions of criminal law.

Normative juridical research uses secondary data sources. Secondary data in this type of normative juridical research is data sourced from legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

Legal materials as secondary data used to analyze legal issues in this thesis are as follows.

- a) Primary Legal Materials, are binding legal materials, sourced from:
  - 1) The 1945 Constitution of the Republic of Indonesia.
  - 2) Law Number 1 of 1946 concerning the Criminal Code.
  - 3) Law Number 8 of 1981 concerning the Criminal Procedure Code.
  - 4) Law Number 22 of 2009 concerning Road Traffic and Transportation.
- b). Secondary Legal Materials, are legal materials that provide explanations related to primary legal materials, sourced from books, scientific journals, and legal expert opinions related to the legal issues studied in this thesis regarding the criminal liability of traffic accident perpetrators resulting in death through the study of judges' decisions.
- c). Tertiary Legal Materials, are legal materials that provide additional explanation or support that supports existing data on primary and secondary legal materials. The tertiary legal materials used are legal dictionaries and internet searches.

## III. Result and Discussion

### 3.1 Criminal Law Enforcement

In implementing law enforcement, three elements must always be considered, namely: a) legal certainty that violators are punished, b) benefits, from law enforcement actions that can have a preventive effect, and c) justice, if from the perspective of law enforcement. community victims and perpetrators feel that there is a balance between the actions and the consequences received by the perpetrator's victims.

Judging from the three principles in law enforcement, law enforcement against highway traffic crimes can be said to be still far from what is expected. It is evident from

the data that has been described in the previous section, the essence of which is that in terms of legal certainty the level of disclosure of traffic criminals is still very low. Meanwhile, in terms of expediency, there is not much preference effect from law enforcement that has been carried out so far. The proof is that amid 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 traffic criminals is felt like an embodiment of a sense of justice, both for victims and for the general public.

Concerning this law enforcement, Soerjono Soekanto stated that the main problem in law enforcement lies in the influencing factors. These factors are a) statutory factors, b) law enforcement factors, c) law enforcement facilities factors, d) community factors, and e) cultural factors.

Law enforcement when viewed from one of the factors above, such as the Legislative factor, namely as follows, there are various types of traffic crimes as previously stated.

Article 359: Mention anyone who because of his mistake caused a person to die, shall be sentenced to a maximum imprisonment of five years or a maximum imprisonment of one year.

Article 360 paragraph 1: Says whoever because of his mistake causes a person to be seriously injured shall be punished with imprisonment for a maximum of five years or a maximum imprisonment of one year.

Article 360 paragraph 2: Anyone who due to his/her mistake causes a person to be injured in such a way that that person becomes temporarily ill or unable to carry out his/her position or work temporarily, shall be punished with a maximum imprisonment of nine months or a maximum imprisonment of six months or a maximum imprisonment of six months. a maximum fine of four thousand five hundred rupiah.

Article 361: If the crime as set forth in this chapter is committed in the exercise of a position or job, the sentence may be increased by one third, and the right to perform the work used to carry out the crime may be imposed, and the judge may order the announcement of his decision.

A number of provisions relating to traffic crimes normatively still have some weaknesses. First, except for articles on traffic crimes, all of them are interpretive, so that it can result in disparities in their application. Second, the criminal sanctions that are threatened are less severe so they are considered unresponsive to the public's reaction to traffic crimes. In relation to the problem of the low level of punishment imposed on traffic criminals, it can be explained normatively, that first, with regard to the maximum penalty imposed, it is relatively low. Ranging from one year to five years. Moreover, for alternative penalties in the form of fines, the nominal is much lower with the development of currency values for current conditions.

### **3.2 Legal Liability for Traffic Accident Crimes**

Criminal liability if a perpetrator must commit a criminal act; capable of being responsible; intentionally or negligently, and there is no forgiving reason, The discussion regarding the elements of criminal liability in cases of driver negligence causing traffic accidents is as follows:

#### **a. Commit a crime**

Criminal liability can only occur if someone has previously committed a crime. Moeljatno said, "a person cannot be held accountable (convicted of a crime) if he does not commit a criminal act and commits a crime." 7 Criminal liability will only occur if someone has previously committed a crime.

On the other hand, the existence of a crime does not depend on whether there are people who commit the crime. Based on the judge's decision, the form of the defendant's responsibility for the negligence of the driver is that in these cases the defendant has been legally and convincingly proven guilty of committing the crime of "driving a motorized vehicle because of negligence resulting in a traffic accident that resulted in the death of another person" and imposed a sentence on the defendant. . therefore, with imprisonment for 5 (five) months with the prosecutor's demands is 8 (eight) months in prison. Meanwhile, in the second case, the defendant Eko Budiyono was sentenced to 3 (three) years and 6 (six) months in prison, which is more severe than the first case because in the second case the defendant was proven to have also caused people to die, there were minor injuries and property damage.

This is following the applicable regulations as regulated in Article 193 paragraph (1) of the Criminal Procedure Code which reads as follows: "If the court believes that the defendant is guilty of committing the crime he is accused of, the court shall impose a sentence. In both cases, the criminal responsibility given has fulfilled the element of criminal responsibility, having to commit a criminal act, namely an accident that caused the victim to die, so that this element is fulfilled. The decision made by the judge is still under the provisions of Article 310 paragraph (4) of the LLAJ Law which states that "In the event of an accident as referred to in paragraph (3) which results in the death of another person, the punishment is a maximum imprisonment of 6 (six) years. and/or a maximum fine of Rp. 12,000,000.00 (twelve million rupiahs)."

In the decision Number 101/Pid.B/2020/PN. Cirebon, the decision-making process carried out by the Panel of Judges is following the applicable legal rules, namely based on at least two valid pieces of evidence, in which case, the evidence used by the judge is witness testimony, evidence, and testimony from the defendant. . Then then consider criminal responsibility, in this case, the Panel of Judges based on the facts that emerged at the trial judged that the defendant could be accounted for the actions committed with the consideration that at the time he committed his actions the defendant was aware of the consequences, the perpetrator in carrying out his actions was in a state of healthy and capable to consider his actions.

b. Responsibility

From the point of view of the ability to be responsible, only someone who is able to be responsible can be held accountable for criminalization. It is said that a person is capable of being responsible, in general, his mental condition is not disturbed and his soul is able to realize the nature of his actions, he can determine his will for the action, whether it will be carried out or not and can know the reproach of the action.

Article 77 paragraph [1] of the UULAJ states that the function of issuing a driver's license is as proof of competence for someone who has passed the knowledge, ability, and skill test to drive a motorized vehicle on the road in accordance with the requirements determined under UULAJ (Article 1 point 4 Perkapolri No. 9 of 2012 concerning Driver's Permit). Based on this explanation, it can be said that the responsibility for motor vehicle accidents lies with the driver.

c. Deliberation

In every case of a traffic accident that occurs on the highway, of course, it has legal consequences for the driver of the vehicle. The legal provisions relating to fatal accidents that result in injury or death of a person are generally the Criminal Code (Book of Criminal Law) and specifically are regulated in Law (UU) No. 22 of 2009 concerning Traffic. People often perceive that traffic accidents that cause injuries and deaths are always the absolute fault of the driver of the vehicle concerned. Meanwhile,



according to the applicable legal theory that a person's fault is seen from the actual incident factor, what factors caused the traffic accident. This can be revealed from the chronology of events, and testimonies including eyewitnesses who saw the accident.

In the decision Number 101/Pid.B/2020/PN. Cirebon is an unintentional driver but in this case, the driver is declared negligent, and because of his negligence which caused the victim to die, the driver of a motor vehicle resulting in death in a traffic accident is subject to Article 359 of the Criminal Code, which reads: negligence) causes another person to die, is punishable by a maximum imprisonment of five years or maximum imprisonment of one year.

In this case, the judge has decided that the defendant was negligent and caused an accident so that the victim died, based on this, the element of criminal responsibility has been fulfilled, then based on the four elements in Article 310 of the LLAJ Law, generally the third element (3) which takes more time to complete. can be proven. Through investigations, law enforcement officers, in this case, the police, should have to prove that there was an element of negligence. For these two rules, if in the case of an accident resulting in the death of a person, then according to the law what must be imposed on the driver of the vehicle is a criminal offense regulated in the LLAJ Law, in this case following the provisions that refer to Article 63 paragraph (2) of the Criminal Code which states that"

If an act is included in a general criminal code, it is also regulated in a special criminal rule, then only the specific one will be applied." The reference in Article 63 paragraph (2) of the Criminal Code, because the case of a traffic accident resulting in death has been regulated in the LLAJ Law as a special regulation, the public prosecutor in the letter In both cases it is known that the Defendant was negligent so that in the case of the accident causes the victim to die, this is an element of criminal responsibility, namely the result of intentional or negligence in this case being fulfilled.

d. The absence of intention to apologize

In this forgiving reason, a subject who commits a crime is faced with such a situation that his mental state leads him to take an action that is included in a criminal act. This means that in this forgiving reason, the element of guilt from the perpetrator is eliminated. Included in the excuses are:

- a. The inability of the perpetrator to take responsibility (Article 44 paragraph (1) of the Criminal Code)
- b. Forced defense that exceeds the limit (article 49 paragraph (2) of the Criminal Code)
- c. The act of carrying out in good faith, an illegal position order (Article 51 or (2) of the Criminal Code)

#### **IV. Conclusion**

Based on the things above, it can be concluded that the legal sanctions against traffic criminals that cause death according to Indonesian positive law are divided into two. Penal sanctions and non-penal sanctions. Penal sanctions as regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation. One of them is regulated in Article 310 paragraph (4). The non-penal sanctions are regulated in the administrative sanctions. In this case, the judge has decided that the defendant was negligent and caused an accident so that the victim died, based on this, the element of criminal responsibility has been fulfilled, then based on the four elements in Article 310 of the LLAJ Law, generally the third element (3) which takes more time to complete. can be proven. Through investigations,

law enforcement officers, in this case, the police, should have to prove that there was an element of negligence. For these two rules, if in the case of an accident resulting in the death of a person, then according to the law what must be imposed on the driver of the vehicle is a criminal offense as regulated in the LLAJ Law, in this case in accordance with the provisions referred to in Article 63 paragraph (2) of the Criminal Code.

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