



The relevance of judges' decisions in the settlement of traffic crimes based on decision number 77/pid/2019/pt smg

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Abstract

The occurrence of traffic accidents caused many victims, died so the perpetrators could be charged with murder due to negligence or negligence in driving a motorized vehicle. This application is regulated in Law Number 22 Year 2009 Concerning Road Traffic and Transportation. But in some cases of traffic accidents that already have permanent legal force in the District Court, the sentence imposed by the panel of judges on the perpetrators of criminal offenses because many of them do not refer to the provisions of the law. The results of the study indicate that the factors that cause judges' decisions are not in accordance with the provisions of the law in traffic accident cases is the existence of the police that allow peace of traffic crime, impose a minimum prison sentence.

Keywords: implementation, road traffic and transportation, traffic accidents

1. Introduction

The development of transportation means is not decreasing but is increasing, moreover it is added with various types and forms of new transportation equipment with various modes, forms and advantages of each. However, the increase in the amount of transportation has not been matched by good road conditions and also public awareness about driving rules. Because, inadvertent road users can also affect the high and low number of accidents that occur on the highway, both of which cause other people to die or only cause injuries ^[1]. The government as the organizer of the country, also seeks to minimize the high number of accidents in Indonesia. Through the 2011-2020 road safety decade program, which was launched by the Vice President in Jakarta on June 20, 2011, the government is targeting a 50 percent reduction in fatality by 2020 ^[2].

In the modern era as it is today, the field of transportation is important in the field of public welfare which supports growth in various fields. Advances in science and technology support the development of transportation equipment, causing vehicle growth to increase. The development of vehicles as a means of transportation has a positive impact on the fulfillment and improvement of human well-being, as a means of mobilization in order to facilitate daily activities ^[3].

Traffic in Indonesia is regulated in statutory regulations, namely Law Number 22 of 2009 concerning Road Traffic and Transport, where the regulations are made to ensure

security, order and welfare in society that need to be determined regarding prohibited and mandatory actions. While violations of these provisions are threatened with crime. Frequent traffic violations, both intentional and unintentional may be caused by sanctions imposed on the perpetrators of traffic violations are too light, so do not be surprised if more and more events occur traffic violations. The legal consequences of a traffic accident are criminal sanctions for the creator or the cause of the event and can also be accompanied by civil claims for material losses incurred ^[4].

The number of victims killed in accident cases is categorized as homicide due to negligence or negligence, because murder in the context of positive criminal law is categorized for killings desired by the perpetrators, killings due to mistreatment and killings due to negligence or negligence. The purpose of the murder due to negligence or negligence itself is a criminal act committed by someone who is not because of his desire to commit the crime. But because of his carelessness that resulted in other people become victims. So, the rider is not categorized as intentional but is considered as negligent ^[5]. The formula "because of his fault" is an element of "negligence" or culpa which according to criminal law consists of; (a). Culpa with awareness, and (b). Culpa without awareness ^[6]. Traffic accidents that cause many victims, the perpetrators can be charged with murder because of negligence or negligence in driving a motorized vehicle regulated in Law Number 22 Year 2009 concerning Traffic and Road Transportation. Traffic accidents according to Fachrurrozy as quoted by

¹ Zuleha, Relevansi Putusan Hakim Dalam Penyelesaian Tindak Pidana Lalu Lintas, Jurnal Hukum Samudra Keadilan Volume 13, Nomor 1, Januari-Juni 2018, HLM 176

² Lihat dalam <http://www.bin.go.id/awas/detil/197/4/21/03/2013/kecelakaan-lalu-lintas-menjadi-pembunuhterbesar-ketiga>, diakses pada 21 Februari 2020

³ Marsaid, M. Hidayat, Ahsan, Faktor Yang Berhubungan Dengan Kejadian Kecelakaan Lalu Lintas Pada Pengendara Sepeda Motor Di Wilayah Polres Kabupaten Malang, Jurnal Ilmu Keperawatan - Volume 1, No. 2, Nopember 2013, hlm. 99

⁴ Muhammad Dani Hamzah, Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang, Jurnal Daulat Hukum, Vol. 1. No. 1 Maret 2018, hlm. 43

⁵ P.A.F. Lamintang dan Theo Lamintang, Delik-Delik Khusus: Kejahatan Terhadap Nyawa, Tubuh, dan Kesehatan, Jakarta: Sinar Grafika, 2012, hlm. 43

⁶ Ledan Marpaung, Tindak Pidana Terhadap Nyawa dan Tubuh, Jakarta: Sinar Grafika, 2000, hlm. 65

Antony are an unexpected and unintentional event involving vehicles with or without other road users, resulting in human casualties (suffered minor injuries, serious injuries, and death) and property losses.^[1] This law also regulates the rights, obligations and responsibilities of service providers for losses from third parties as a result of the implementation of road transportation. Because in its development, the perpetrators of this road traffic crime are obliged to provide compensation to their victims. Indeed compensation for victims of road traffic crime at this time seems to be an obligation, especially if the person is a person who has a strong economic position or in other words has more money.

However, in practice in the community, the parties involved in accidents often solve their own problems of compensation, by providing compensation, compensation, assistance to those who are considered victims (who suffer more) voluntarily, sometimes even not blaming their right and wrong. This habit is likened to a peace where the victim and the perpetrator sit together in a meeting to speak together (restorative justice). This also happened in the case that had been decided by the Surakarta District Court and was strengthened by the Appellate Decision in the Semarang High Court, with the decision number: 77 / Pid / 2019 / PT SMG, in that decision the defendant on behalf of Iwan Adranacus, managing director of PT Indaco Warna Dunia, who was known to have deliberately driven his vehicle, a Mercedes car in a way or condition that endangered lives or caused another person to die after previously having quarreled with Eko Prasetyo as a victim, then in the Decision the defendant was convicted with a prison sentence of 8 (eight) month, one of the judges' considerations to ease the sentence against the victim is that the Defendant has given condolence money to the victim's family / victim's wife for education costs for the victim's child, and the victim's wife has received compensation / condolence amounting to Rp1,100,000,000.00 (one billion one hundred million rupiah).

If we look at the case intentionally from the defendant and are not included in the definition of traffic accidents due to negligence, the judge based on his decision also agreed that the defendant had intentionally driven his vehicle namely a Mercedes car in a way or condition that endangered lives or caused other people to die regulated in Article 311 paragraph (5) of the Law of the Republic of Indonesia Number 22 Year 2009 concerning Road Traffic and Transportation. Although in this decision the judge rejected the indictment of the Public Prosecutor to state that the defendant had violated Article 338 of the Indonesian Criminal Code (KUHP). However, the question and based on some witness statements and facts in the field, before the collision occurred, there was a check in the mouth between the victim and the defendant, which was later also said by several witnesses that the defendant intentionally crashed his car at high speed towards the victim which caused the loss of life victims after the quarrel. So based on this the question arises, why in the case of a traffic accident that results in the loss of the lives of others the judge tends to give decisions that are not in accordance with the provisions of the law? Also, how does the law apply to traffic accidents that cause people to die?

2. Research Method

The type of this research is normative legal research that comes with interviews. As such, the first step was collecting the secondary data, then continued with interviews. Normative legal research prioritizes literature studies, data collection activities from various literature from both the library and other places^[7]. This normative legal research focuses on legal principles, legal systematics, legal synchronizations, and legal history^[8]. This research used secondary data. The secondary data collection tools are in the form of books related to the theory and concept of research objects, related articles, literature on scientific works and so on through literary studies^[9]. The data analysis used in this research is a qualitative analysis which is then presented in a descriptive form. Qualitative analysis is conducted through categorisation based on the problems researched and the data collected.

3. Result and Discussion

3.1 Factors causing judges' decisions against traffic accidents cases are not in accordance with law provisions

Pertanggungjawaban pidana penyelenggara jalan dalam kecelakaan lalu lintas yang mengakibatkan orang lain meninggal dunia, secara tegas diatur dalam ketentuan Pasal 273 Undang-Undang No. 22 Tahun 2009 tentang Lalu Lintas dan Angkutan jalan, yang berbunyi sebagai berikut:

Article (1) resulting in minor injuries and / or damage to vehicles and (1) of the Criminal Code: any road operator that does not immediately and properly repair damaged roads that result in traffic accidents as referred to in Article 24 paragraph (1) resulting in minor injuries and / or damage to vehicles and / or goods sentenced to prison the longest (six) months or a maximum fine of Rp 12,000,000.00 (twelve million rupiah).

Article (2): In the case of an act as referred to in paragraph (1) resulting in serious injuries, the perpetrators shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 24,000,000.00 (twenty four million rupiah).

Article (3): In the case of an act referred to in paragraph (1) resulting in another 65 deaths, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiahs)). Paragraph (4): a road operator who does not give signs or signs on a damaged and un-repaired road as referred to in Article 24 paragraph (2) shall be liable to a maximum imprisonment of 6 (six) months or a maximum fine of Rp 1,500,000.00 (one million five hundred thousand rupiah).

According to the provisions of Article 273 above, it can be said clearly and unequivocally that road operators must take responsibility for the legal consequences of road traffic accidents caused by road damage resulting in other deaths. But on the other hand traffic accidents can occur due to the element of negligence from road users themselves, resulting in accidents, both of which cause minor injuries, serious

⁷ Maria S.S, *Metodologi Penelitian Ilmu Hukum*. Yogyakarta: Gadjah Mada Press, 2016.

⁸ Suharsimi A, *Prosedur Penelitian Suatu Pendekatan*. Jakarta: Rineka Cipta, 2018.

⁹ Dudu D.M, "Modernization and Acceleration of Case Standard Handling and Reviewing on Indonesia Supreme Court", *Journal of Legal, Ethical and Regulatory Issues*, Volume 21, Issue 3, 2018

injuries or the death of one of the road users. Based on the results of the study, there are several factors causing the judge's decision on traffic accident cases not in accordance with the provisions of the law as follows:

a. There is a police force that allows peace of traffic crime

The level of traffic violations is mostly done by students and students who do not pay attention to traffic signs. But not a few students and students who are victims of both traffic accidents and traffic violations. The condition shows that the percentage increase in cases of traffic violations from year to year is increasing. The legal consequence of a traffic accident is the existence of a criminal offense for the creator or the cause of the event and can also be accompanied by civil claims for material losses incurred. As stated by Andi Hamzah, that "In a variety of mistakes, where a person who does wrong causes harm to others, he must pay compensation ^[10].

Peace in traffic accidents can be seen that the peace aspect at the accident site is still frequently practiced. It aims to reduce the accumulation of cases in court. The settlement of a traffic accident is carried out peacefully. The implementation of the peace of the traffic crime that was settled at the police level was carried out on the grounds that the settlement was done in a family manner and the injured party was only slightly injured, so that the perpetrators of the crime requested the settlement to be carried out peacefully. Therefore, the police only facilitates both parties. The police are facilitating the litigants with the reason that the parties quickly resolve disputes that occur. In addition, the police see before written a letter of peace with the cost of compensation provided by the perpetrator to the victim at the price of the loss suffered by the victim. The reason the police conducted a peace of traffic crime based on the Police Chief's Letter No. Pol: B / 3022 / XII / 2009 / SDEOPS, December 14, 2009 concerning Handling Cases through Alternative Dispute Resolution (ADR).

b. Peace Accused by perpetrators of accidents related to victims of traffic crimes

Sanctions Compensation for damages, is a sanction that requires someone who has acted detrimental to another person to pay a sum of money or goods to the injured person, so that the losses that have occurred are considered to have never occurred. At present sanctions for compensation are not only part of the civil law, but have also been incorporated into the Criminal Law. This development occurred because of the increasing attention of the world community towards victims of criminal acts. Thus it will restore the victim's belief system in dealing with life. Likewise it will free the guilty convict who can make him depressed and even dangerous and can harm himself or the community. Besides that, psychologically, by receiving the compensation money by the victim, it means that the victim can be said to have apologized to the perpetrators of the crime. Criminal reduction in traffic violations is also carried out by the perpetrators and the victims by assigning a power of attorney to the lawyer.

c. Providing compensation as a form of peace from the perpetrators of traffic crimes.

Many traffic criminals provide compensation to their victims. Compensation for victims of traffic crime at this time seems to be an obligation, especially if the criminal act is a person who has a strong economic position or has excess money. In the trial process itself the judge will always ask the makers of road traffic crime, whether it has provided compensation to the victim or his family. This is because victims of road traffic crimes generally suffer injuries or serious injuries, so they must be treated in hospitals that require funds, and those who die require funeral costs. Compensation will not restore the life of someone who has died but the provision of compensation is very useful especially if the victim dies the traffic crime is the person who is the backbone of the family ^[11]. Besides giving compensation issued by the perpetrators, also issued by the PT. Jasa Raharja. Types of compensation provided by PT. Jasa Raharja in the form of death compensation with the type of land transportation equipment amounting to Rp. 25 million. Type of permanent disability compensation for the type of land transportation is given a maximum of Rp. 25 million. The types of compensation issued by the PT. Raharja's services include reimbursement of medical and treatment costs (in accordance with the provisions), death benefits and permanent disability benefits.

4. Application of law against traffic accidents

Judges have the freedom to determine the severity of a crime to be imposed on a criminal offense. However, even though the judge has his own freedom and confidence limit to provide an assessment of the case being examined, the judge must also pay attention to the real issues regarding the conditions set by the Law ^[12]. The panel of judges need to consider incriminating and mitigating matters in traffic accident cases regulated in Law Number 22 of 2009 concerning Road Traffic and Transport, including:

- a. The things that incriminate the criminal of the defendant, namely the actions of the accused resulted in another person dying.
- b. Matters that alleviate the criminal offense of the defendant, namely: 1. The defendant has never been convicted. 2. The defendant was polite and did not complicate the trial.

According to Article 310 point (1) of Law Number 22 of 2009 concerning Traffic and Road Transportation, which is a criminal threat committed by a traffic accident that causes death of a person to a maximum sentence of 6 (six) years in prison, but in reality which often occurs in traffic violations, judges impose minimum prison penalties. If it is related to the theory of criminal application, then the application of the sentence is not maximally applied to the crime of traffic accidents. The combined theory (integrative) is one of the theories of the application of crime to the principle of retaliation and the principle of orderly defense of public order, in other words those two reasons form the basis of

¹⁰ Rizki Prananda Tambunan, Tinjauan Yuridis Terhadap Penerapan Konsep Restorative Justice Dalam Kecelakaan Lalu Lintas ... hlm. 3

¹¹ Abd. Wahid, Tinjauan Hukum Terhadap Santunan Bagi Keluarga Korban Meninggal Atau Luka Akibat Kecelakaan Lalu Lintas Menurut Undang-Undang No. 22 Tahun 2009, Jurnal Ilmu Hukum Legal Opinion, Edisi 3, Volume 1, 2013, hlm. 8

¹² Yusi Amdani, Implikasi Penafsiran Undang-Undang oleh Hakim Praperadilan Dalam Perkara Tindak Pidana Korupsi, Jurnal Mimbar Hukum, Vol. 27, No. 3, 2015, hlm. 462

criminal conviction. Basically the combined theory is a combination of absolute theory and relative theory. The combined two theories teach that sentencing is to maintain the rule of law in society and improve the person of the criminal^[13].

According to the provisions of Article 273 paragraph (3) of Law No. 22 of 2009, stating that in the case of acts referred to in paragraph (1) resulting in another person dying, the offender is sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah). The criminal sentence imposed on the road operator based on this Article is an alternative meaning the judge in imposing a criminal can vote. This can be seen in Article 273 the threat there is the phrase "or", for example imprisonment or fines only.

Settlement of traffic accidents using the law no. 22 of 2009 concerning Traffic and Transport is to follow the positivist mindset of the positivist mindset as we have discussed above. Is accompanied by the mindset of the Pancasila legal ideal. Law in the ideals of the Pancasila law is full of moral values, God values. What is meant by legal ideals are ideas, intentions, inventions and thoughts regarding the law or perceptions about the meaning of law which in essence consists of three elements: justice, usefulness and legal certainty. In understanding positivist law core is order and certainty. Model of settlement of criminal cases of negligence in traffic, the police still enforce the law with a positive legal approach, however the public already has the awareness to settle this case with settlement outside of criminal justice by making peace that is giving compensation to the victim, in the form of covering all medical expenses for the victim injuries and death costs for victims who died.

5. Conclusion

Based on the description of the results of research and discussion, it can be concluded that: Factors causing the judge's decision on traffic accidents are not in accordance with the provisions of the law is the existence of the police that allow peace of traffic accidents on the highway, the peace carried out by the perpetrators traffic accident crime, and the provision of compensation as a form of peace from the perpetrators of traffic accident crimes. Applying the law to traffic accidents the judges impose a minimum prison sentence. If it is related to the theory of criminal application, then the application of the sentence is not maximally applied to the crime of traffic accidents.

6. References

1. Zuleha Relevansi, Putusan Hakim Dalam, Penyelesaian Tindak Pidana, Lalu Lintas. *Jurnal Hukum Samudra Keadilan* Januari-Juni, 2018, 13(1). HLM 176
2. Lihat dalam <http://www.bin.go.id/awas/detil/197/4/21/03/2013/kecelakaan-lalu-lintas-menjadi-pembunuhterbesar-ketiga>, diakses pada 21 Februari 2020
3. Marsaid M Hidayat, Ahsan, Faktor Yang Berhubungan. Dengan Kejadian Kecelakaan Lalu Lintas Pada Pengendara Sepeda Motor Di Wilayah Polres Kabupaten Malang, *Jurnal Ilmu Keperawatan*, 2013, 1(2).
4. Muhammad Dani Hamzah, Penegakan Hukum Pada.

- Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang, *Jurnal Daulat Hukum* Maret, 2018, 1(1).
5. Lamintang dan Theo Lamintang PAF, *Delik-Delik Khusus. Kejahatan Terhadap Nyawa, Tubuh, dan Kesehatan*, Jakarta: Sinar Grafika, 2012.
6. Leden Marpaung. *Tindak Pidana Terhadap Nyawa dan Tubuh*, Jakarta: Sinar Grafika, 2000.
7. Antory Royan Dyan, Pranata Hukum. *Jurnal Ilmu Hukum program Studi Magister Ilmu Hukum Program Pascasarjana Universitas Bandar Lampung*, 2012, 7(1).
8. Maria SS. *Metodologi Penelitian Ilmu Hukum*. Yogyakarta: Gadjah Mada Press, 2016.
9. Suharsimi A. *Prosedur Penelitian Suatu Pendekatan*. Jakarta: Rineka Cipta, 2018.
10. Dudu DM. "Modernization and Acceleration of Case Standard Handling and Reviewing on Indonesia Supreme Court", *Journal of Legal, Ethical and Regulatory Issues*. 2018; 21(3).
11. Abd Wahid. *Tinjauan Hukum Terhadap Santunan Bagi Keluarga Korban Meninggal Atau Luka Akibat Kecelakaan Lalu Lintas Menurut Undang-Undang No. 22 Tahun 2009*, *Jurnal Ilmu Hukum Legal Opinion*, Edisi. 2013; 1:3.
12. Yusi Amdani. *Implikasi Penafsiran Undang-Undang oleh Hakim Praperadilan Dalam Perkara Tindak Pidana Korupsi*, *Jurnal Mimbar Hukum*. 2015; 27:3.
13. Adami Chazawi, *Pelajaran Hukum Pidana I*. Jakarta: PT. Raja Grafindo, 2010.

¹³ Adami Chazawi, *Pelajaran Hukum Pidana I*, Jakarta: PT. Raja Grafindo, 2010, Hlm 162-163.