



Excavating politics of law about legal settlement of single traffic accidents due to damaged roads

Satrio Febrianto Pamungkas¹, Supanto², Muhammad Rustamaji³

¹ Master of Law Student, Faculty of Law, Sebelas Maret University, Indonesia

^{2,3} Lecturer, Faculty of Law, Sebelas Maret University, Indonesia

Abstract

This study aims to determine whether Law No. 22 of 2009 on Road Traffic and Transportation (“Road Traffic and Transportation Law”) has a role in resolving single traffic accident cases due to damaged roads outside the court. In answering the above problems, the research method used is doctrinal research. The type of this research uses normative legal research, a legal research that is conducted based on law and regulation and library material, which is known as secondary material. Related with this type of research, the approach used in this paper are the statutory approach, the historical approach, and the conceptual approach. So if it is questioned whether Road Traffic and Transportation Law plays a role in resolving single traffic accident cases due to damaged roads outside the court, answers are found, Road Traffic and Transportation Law played a role in resolving single traffic accident cases due to damaged roads outside the court, because there was no clear and detailed definition of who the road organizers was and the form of criminal liability and no provisions regarding the maximum duration of the damaged roads must be repaired then when viewed from the politics of law, the characteristics of Road Traffic and Transportation Law are conservative legal products.

Keywords: criminal liability, road organizer, road traffic and transportation law, single traffic accident

1. Introduction

A traffic accident is an unexpected and unintentional road event involving a vehicle with or without other road users resulting in human casualties and / or property loss ^[1]. Three main factors cause accidents. First is the human factor; the second is the vehicle factor, and the last is the road factor. The combination of these three factors can occur, between humans and vehicles, for example, walking more than the specified speed limit then the tire breaks, resulting in an accident. Also, there are still environmental factors, weather which can also contribute to accidents ^[2].

Normatively, traffic accidents are classified into three namely:

- a. Minor Traffic Accident, an accident that causes damage to vehicles and/or goods;
- b. Moderate Traffic Accident, an accident that causes minor injuries and damage to vehicles and/or goods;
- c. Heavy Traffic Accident, an accident that causes the victim to die or serious injuries.

In the case of a traffic accident, the legal consequence is a legal sanction that must be applied against the perpetrator, especially if it causes the victim to die, as stipulated in Article 359 of Criminal Code, which reads: "Anyone who due to his negligence causes the death of another person who is threatened with a maximum prison sentence of five years or a maximum confinement of one year" ^[3]. However, these provisions can't be applied in a traffic accident if ^[4];

- a. There are forced conditions that cannot be avoided or beyond the ability of the Driver;
- b. Caused by the behavior of the victim or a third party; and/or
- c. Caused by movements of people and/or animals despite precautions taken.

The party causing the traffic accident must compensate the amount determined based on a court decision. The obligation to compensate for this loss can be carried out outside the court if there is a peace agreement between the parties involved ^[5].

Article 240 of Road Traffic and Transportation Law explains that victims of traffic accidents are entitled to receive:

- a. Help and care from the party responsible for traffic accidents and/or the Government;
- b. Compensation for losses from those responsible for traffic accidents; and
- c. Compensation for traffic accidents from insurance companies.

Compensation is generally better known in the area of Private Law, but in the context of traffic accidents above, there are exceptions. This is as stated by Andi Hamzah that in various kinds of mistakes where people who do wrong cause harm to others, then he must pay compensation ^[6]. This is often called "legal protection for victims of traffic accidents".

A single traffic accident due to negligence of the road organizers that does not immediately and properly repair the

¹ Article 1 Point 24 of Road Traffic and Transportation Law

² Najid, "Estimasi Tingkat Kecelakaan Lalu Lintas Nasional di 6 Propinsi di Pulau Jawa Indonesia",

<https://journal.tarumanagara.ac.id/kidts/article/viewFile/1533/pdf>, accessed on 13 July 2019

³ Article 359 of Criminal Code

⁴ Article 234 Verse 3 of Road Traffic and Transportation Law

⁵ Article 236 of Road Traffic and Transportation Law

⁶ Andi Hamzah. 2008. *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta, hlm. 21

damaged road resulting in a Traffic Accident as mandated by Article 24 Verse (1) of Road Traffic and Transportation Law, there are criminal sanctions following with Article 273 of Road Traffic and Transportation Law, as follows

1. Every Road Organizer that is not immediately and should improve road damaged resulting in traffic accidents as referred to in Article 24 Verse (1), causing minor injuries and/or damage to vehicles and/or goods shall be punished with imprisonment of 6 (six) months or a fine of not more Rp. 12.000.000,00 (twelve million rupiah);
2. In terms of the act referred to in Verse (1) resulting in serious injury, the offender shall be punished with imprisonment for 1 (one) year or a fine of not more Rp. 24.000.000,00 (twenty four million rupiah);
3. In terms of the act referred to in Verse (1) resulting in the victim to die, the offender shall be punished with imprisonment for 5 (five) years or a fine of not more Rp. 120.000.000,00 (one hundred and twenty million rupiah);
4. Road Organizer that does not give marks or signs on the road is damaged and not repaired as referred to in Article 24 Verse (2) shall be punished with imprisonment for 6 (six) months or a fine of not more Rp. 1.500.000,00 (one million five hundred thousand rupiah).

In this case, it can be seen that negligence committed by the road organizers, which resulted in victims of minor injuries, serious injuries, or even death also accompanied by sanctions imprisonment in it, not only contains fines/compensation. Article 273 of Road Traffic and Transportation Law has categorized that violations of Article 24 Verse (1) of Road Traffic and Transportation Law as a Criminal Act so that it contains Criminal Liability by the road organizers as a criminal offender. Concerning the combination of the Criminal Acts and the Criminal Liability, the road organizers as a criminal offender should have been subjected to Criminal Sanctions^[7]. In reality, a single traffic accident involving the road organizer as the person responsible is very rarely carried out by the legal process and is always resolved with compensation if the victim reports the road organizers to the police and if not reported it will be considered as a mere disaster without liability from the road organizers.

2. Problem statement

Based on the background above, the author limits the problem to be raised and the problem statement is whether Law No. 22 of 2009 on Road Traffic and Transportation ("Road Traffic and Transportation Law") has a role in resolving single traffic accident cases due to damaged roads outside the court.

3. Research methods

The type of this research uses normative legal research, a legal research that is conducted based on law and regulation and library material, which is known as secondary material. Related with this type of research, the approach used in this paper are the statutory approach, the historical approach,

and the conceptual approach^[8]. These approach are done by reviewing Law No. 22 of 2009 on Road Traffic and Transportation that related to the problem that is being discussed in this research.

4. Discussion and research result

a. Legal settlement of single traffic accidents due to damaged roads on the law No. 22 of 2009 on road traffic and transportation

The existence of out-of-court settlement of cases through mediation is a new dimension which examined from theoretical and practical aspects. Studied by the practical dimension, mediation will be correlated with the achievement of the world of justice^[9]. Over time where day by day the amount of cases that enter the court increases in all forms and variants, so that the consequences become a burden to the court in examine and judge cases, according to the principle of "simple, rapid and low-cost justice" without having to sacrifice the achievement of judicial aims, namely legal certainty, expediency and justice. Do all kinds of criminal cases have to be brought and resolved in court, or are there certain criminal cases that allow them to be resolved through a scheme of penal mediation. In the mechanism of penal mediation, as long as it is actually desired together by the parties (suspects and victims), and to meet broader interests, that is the keep up of social harmony.

Mediation is generally known as an alternative form of dispute resolution in civil law, but in its development, mediation can be conducted in criminal cases called Penal Mediation. Penal mediation can be used in a number of crimes categorized as specific^[10]. Another implication of the existence of Penal Mediation can be said between "there" and "non-existence". This is so, on the one hand because Penal Mediation in the provisions of the law is not known in the criminal justice system (insofar as the search for mediation of the authors of sanctions at the level of the provisions only exists in the form of a diversion provision in Law No. 11 of 2012 on the Criminal Crimes Judicial System), but at the level of the law is known only to a limited extent by discretion law enforcement and its partial nature. Then, on the other hand, it turns out that the practice of Penal Mediation has been practiced by the Indonesian people and that the settlement is made outside the court, as through the mechanisms of adat institutions^[11].

Not a small number in a road accident which made peace thanks to the mediation of sanctions which, of course, is done on the basis of the agreement of the perpetrators and victims, must compensate the victim or his heirs in losses incurred by the criminal offenses committed by the perpetrators^[12]. However, the application of penal mediation as an effort to achieve restorative justice in traffic

⁸ Peter Mahmud Marzuki, 2014. *Penelitian Hukum Edisi Revisi*, Kencana Prenada Media Group, Jakarta, hlm 93-95

⁹ Barda Nawawi Arief. 2007. *Aspek Kebijakan Mediasi Penal dalam Penyelesaian Sengketa di Luar Pengadilan*. Makalah. Seminar Nasional Pertanggungjawaban Hukum Korporasi dalam Konteks Good Corporate Governance. Program Doktor Ilmu Hukum Universitas Diponegoro. Jakarta: Inter-Continental Hotel, 27 Maret 2007

¹⁰ Keyzha Nataharisma dan I Nengah Suantra. 2013. Makalah. *Mediasi dalam Penyelesaian Perkara Pidana di Indonesia*. Bali: Fakultas Hukum Universitas Udayana, hlm 1

¹¹ Lilik Mulyadi. 2015. *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia*. Bandung: PT. Alumni, hlm 46

¹² Dede Kania. 2014. *Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia*. Jurnal Yustisia, Vol. 3 No. 2, Mei-Agustus 2014, hlm 27

⁷ Ismunarno, Rofikah, Sabar Slamet. 2017. *Model of Criminal Case Resolution of Traffic Accidents Causing Death*. Jurnal Yustisia, Vol. 6 No. 1, Januari-April 2017, hlm 228.

accident cases also raises concerns, namely the fear of the perpetrators' arbitrary because they believe that are able to provide compensation so that they can repeat it later and have no deterrent effect, therefore the community needs to better understand how the application of penal mediation in a traffic accident, and in addition to the fact that penal mediation doesn't always end in agreement, many factors become obstacles to penal mediation which results in disagreement. Penal mediation is here an alternative solution outside the court where, in its application, the concept of restorative justice can be included, so that it should fulfill a sense of justice and opportunity^[13]. This substantial justice that is achieved is a reflection of the values of Pancasila, notably to achieve social justice for all Indonesians^[14].

The factors underlying the normative use of penal mediation can be seen in Article 236 Verse (2) of Road Traffic and Transportation Law where, in certain cases, traffic accidents can be resolved outside the court. If there is a peace agreement between the parties involved, material loss and compensation can be done outside the court^[15]. However, according to the provisions of this article is only a form of liability for traffic accidents where the parties are road users and cause only material losses without loss of life, namely in the form of a compensation for material losses. For the form of criminal responsibility by road organizers for a single traffic accident cases due to damaged roads is not clearly regulated in the Road Traffic and Transportation Law.

Regarding a single traffic accident due to damaged roads that should have criminal sanctions related to negligence of road organizers repairing damaged roads, road organizers often argue that they have installed signs around damaged roads to prevent traffic accidents, so that according to them there are no mistakes by their deeds as the cause of the accident because by already installing road safety alert signs, textually they feel they have obeyed Road Traffic and Transportation Law.

b) Excavating politics of law No. 22 of 2009 on road traffic and transportation about legal settlement of single traffic accidents due to damaged roads

According to Moh. Mahfud, there are 2 characteristics of legal products, namely: first, reactive or populist legal products and conservative legal products^[16]. Responsive legal products are legal products that reflect a sense of justice and meet the expectations of the community, because in the process of making them give a full role and participation to social groups or individuals in society. Conservative legal products are legal products whose content more reflects the social vision of the political elite and more reflects the wishes of the government.

¹³ Sri Wibowo, 2016, *Tanggung Jawab Keperdataan Pelaku Kecelakaan Lalu Lintas Jalan Raya* (Stud1 Kasus Di Wilayah Sleman), Thesis, Program Magister Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Islam Indonesia Yogyakarta, hlm 63

¹⁴ Muhammad Taufiq, 2014, *Keadilan Substansial Memangkas Rantai Birokrasi Hukum*, Yogyakarta: Pustaka Pelajar, hlm 277

¹⁵ Kartika Febryanti dan Diana Kusumasari, "Pertanggungjawaban Hukum Dalam Kecelakaan yang Mengakibatkan Kerugian Materi", <https://www.hukumonline.com/klinik/detail/ulasan/lt4ee0929d2179f/pertanggungjawaban-hukum-dalam-kecelakaan-yang-mengakibatkan-kerugian-materi/>, accessed on 13 July 2019

¹⁶ Mahfud MD. 2011. *Politik Hukum di Indonesia, Edisi Revisi: Cetakan ke-IV*. Jakarta: Rajawali Press, hlm. 19

On the basis of the definition of the legal character of the above products, Road Traffic and Transportation Law is included in the character of conservative legal products, because when it was created, Road Traffic and Transportation Law was designed as a police directive to curb road users in order to achieve road safety objectives and the material content was more regulation and criminal sanctions for road users and public transport companies, while criminal sanctions for road organizers belonging to the government in the affairs section of the road organizers are included only in a single article, namely article 273 Road Traffic and Transportation Law concerning criminal sanctions in the event of negligence of road organizers who do not immediately and correctly repair damaged roads which lead to traffic accidents.

5. Conclusion

The conclusion from the above discussion as to whether Law No. 22 of 2009 on Road Traffic and Transportation ("Road Traffic and Transportation Law") has a role in resolving single traffic accident cases due to damaged roads outside the court, is the Law No. 22 of 2009 on Road Traffic and Transportation Law plays a role because there is no complete clarity which comprehensively explain who are the road organizers refer to and how is criminal responsibility is formed for them and that there is no regulation regarding the maximum amount of duration at the latest that the damaged road must be repaired so that by installing only a warning sign of a damaged road, the road organizers feels free from criminal sanctions. However, from a number of cases involving this matter after mediation between the parties, the cases have tended not to proceed due to the discretion of the police. The above happens because, given its politics of law, the characteristic of the Road Traffic and Transportation Law is conservative legal product intended to guide the police in disciplining road users in order to achieve road safety objectives and criminalize more on road users and public transport companies, while criminalizing road organizers as part of government in matters of road administration, it is contained in only one article, namely the article 273 of Road Traffic and Transportation Law concerning the criminal sanctions in the event of negligence of road organizers who do not immediately and correctly repair damaged roads which lead to traffic accidents.

6. References

1. Andi Hamzah. *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta, 2008.
2. Lilik Mulyadi. *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia*. Bandung: PT. Alumnim, 2015.
3. Mahfud MD. *Politik Hukum di Indonesia, Edisi Revisi: Cetakan ke-IV*. Jakarta: Rajawali Press, 2011.
4. Muhammad Taufiq. *Keadilan Substansial Memangkas Rantai Birokrasi Hukum*, Yogyakarta: Pustaka Pelajar, 2014.
5. Peter Mahmud Marzuki. *Penelitian Hukum Edisi Revisi*, Kencana Prenada Media Group, Jakarta, 2014.
6. Barda Nawawi Arief. *Aspek Kebijakan Mediasi Penal dalam Penyelesaian Sengketa di Luar Pengadilan*. Makalah. Seminar Nasional Pertanggungjawaban Hukum Korporari dalam Konteks Good Corporate Governance. Program Doktor Ilmu Hukum Universitas Diponegoro. Jakarta: Inter Continental Hotel, 27 Maret,

- 2007.
7. Dede Kania. Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia. *Jurnal Yustisia*, Mei-Agustus, 2014; 3:2.
 8. Ismunarno Rofikah, Sabar Slamet. Model of Criminal Case Resolution of Traffic Accidents Causing Death. *Jurnal Yustisia*, Januari. 2017; 6:1.
 9. Keyzha Natakharisma dan I Nengah Suantra. Makalah. Mediasi dalam Penyelesaian Perkara Pidana di Indonesia. Bali: Fakultas Hukum Universitas Udayana, 2013.
 10. Sri Wibowo. Tanggung Jawab Keperdataan Pelaku Kecelakaan Lalu Lintas Jalan Raya (Studi Kasus Di Wilayah Sleman), Thesis, Program Magister Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Islam Indonesia Yogyakarta Criminal Code, 2016.
 11. Law No. 22 of on Road Traffic and Transportation, 2009.
 12. Kartika Febryanti dan Diana Kusumasari, Pertanggungjawaban Hukum Dalam Kecelakaan yang Mengakibatkan Kerugian Materi, <https://www.hukumonline.com/klinik/detail/ulasan/lt4ee0929d2179f/pertanggungjawaban-hukum-dalam-kecelakaan-yang-mengakibatkan-kerugian-materi/>, accessed on 13 July 2019
 13. Najid. Estimasi Tingkat Kecelakaan Lalu Lintas Nasional di 6 Propinsi di Pulau Jawa Indonesia, <http://iournal.tarumanagara.ac.id~index.uh~/kids/artic/e/viewFile/1533/pdf>, accessed on 13 July 2019.