

Legal Consequences for Traffic Accident Perpetrators with Dead Victims

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ABSTRACT

Track:

Objective: *The purpose of the study is to determine the legal consequences for traffic accident perpetrators causing death and to investigate the legal considerations for perpetrators in criminal liability for traffic accidents.*

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Method: *The research used is empirical legal. This research employed sociological approach, legal approach, conceptual approach, and case approach. Research on the risk of traffic accidents is an observational study that surveys without any particular treatment given to the research subjects. The data used are primary data and secondary data. Primary data were obtained from the field through interviews. Secondary data were obtained through library research in the form of primary, secondary, and tertiary legal materials. The analysis technique in this research performed descriptive qualitative.*

Finding: *The legal consequence for traffic accident perpetrators with death victims is a minimum of 5 years imprisonment, as per Article 359 of the Criminal Code. Legal considerations for perpetrators in criminal liability for traffic accidents comprise unintentional attribute (accident), those who have never been convicted, settlement between offender and victim, providing precise information, witnesses in*

mitigation, therefore the conviction can be reduced.

Purpose: *This study provides in-depth information about the Legal Consequences for Traffic Accident Perpetrators with Death Victims*

Novelty/ Originality of the study: Legal Consequences for Traffic Accident Perpetrators with Death Victims

Keywords: *Legal consequences, traffic accidents, Death victims*

INTRODUCTION

Traffic congestions are a frequent event on any road around the world. Thousands of people lose their lives on the roads daily. Furthermore, millions must experience permanent disabilities. Children and young adults are ages which are very vulnerable to accidents. Forty teenagers die due to traffic accidents hourly. (Setyowati, D. L., Firdaus, A. R., & Rohmah, 2018). To understand and enact the noble purpose of Law Number 22 of 2009 on Road Traffic and Transportation, the government, especially the Indonesian National Police, has taken measures to promote the law. Moreover, it invites the public to implement and comply with it, thus the prevailing obstacles can be overcome.

In the elucidation of Law Number 22 of 2009 on Road Traffic and Transportation, it emphasizes: "The sharpening of the formula on the principles and objectives in this law has, besides to create the secure, safe, orderly, smooth road traffic and transportation which is integrated to other transportation modes, the objective to enhance the national economy, realize the people welfare, national unity, and integration as well as being able to uphold the national dignity. The security aspect was also taken into account and was emphasized in the arrangement of Traffic and Road Transportation. Besides, this Law also emphasizes the realization of ethics on traffic and national culture (just culture) through the efforts of nurturing, counseling and education on traffic since the early age as well as through the sustainable program."

To achieve the goal, public awareness and traffic discipline are essential. An effort to increase awareness and traffic discipline is through the dissemination of understanding and knowledge of traffic law in a practical and easily understood fashion to the general public. A poor discipline and understanding of traffic law and manners of road users is something that needs to be specially addressed to solve problems in traffic. Various efforts have been made by the government to improve traffic situations in Indonesia, but they have not been able to maintain the increase in traffic.

As an illustration, below is provided the traffic accident data in 2018–2019 at the Gianyar Resort totaling 1,031 cases with 228 deaths, 306 serious injuries, and 1,162 minor injuries.

Table 1. Traffic Accident Data in 2018 and 2019

No	Month	Accident 2018	Victim			Accident 2019	Victim			TREND	
			D	Mj. Inj.	Min. Inj.		D	Mj. Inj.	Min. Inj.	Difference	%
1	January	46	15	25	37	36	9	15	37	Decrease	28%
2	February	36	8	18	30	47	4	18	55	Increase	- 23%
3	March	44	8	23	39	38	13	6	40	Decrease	16%
4	April	30	9	7	36	42	8	13	49	Increase	- 29%
5	May	29	8	3	36	40	9	14	41	Increase	- 28%
6	June	35	10	1	44	49	14	10	59	Increase	- 29%
7	July	48	6	5	73	34	5	13	59	Decrease	41%
8	August	57	9	8	79	58	14	23	56	Increase	-2%
9	September	60	10	2	84	60	15	18	65	0	0%
10	October	43	9	12	54	44	7	16	47	Increase	-2%
11	November	31	6	11	27	46	13	15	43	Increase	- 33%
12	December	35	6	18	32	43	13	12	42	Increase	- 19%
Total		494	104	133	571	537	124	173	591	Increase	-8%

Source: Gianyar Resort 2019

Generally speaking, a road is a place for people to reach a destination due to various interests using various vehicles or pedestrians. Roads become a vital tool in the people's economy, yet it is also a place where humans are victims that most of the time result in enormous deaths. Based on the previous accident data, we experience the following facts: From the data of two consecutive years, it was found the number of traffic accidents resulted in 228 deaths, 306 serious injured, and 1,162 minor injuries. The number of traffic accidents that had occurred was 1,031 times.

Efforts to restrain the enormous number of traffic accidents, future actions are directed at comprehensive countermeasures which include efforts to foster, prevent, and regulate. From these facts, it is important and relevant to scientifically study the criminal liability of traffic accident perpetrators that oftentimes occur in society, which sometimes affect families,

relatives, and community, and therefore community can be aware of it and use it as a guide in their daily life.

Critical factors transforming the accident severity are presented in reports. (Kristle Young, Regan, 2007) reviewing aspects of in-vehicle driver distraction, focusing on mobile phone use state that this device has received the most concern in the distracted driving notion. This paper also discusses the effect of in-vehicle devices on driving performance. (Haigney, D. E., Westerman, 2001) studied the possible effects of mobile phone use on driving performance. The relative effect of mobile phone and hands-free mobile phone use on driving performance was studied involving thirty participants using a stimulator and reported. The results revealed a decrease in the participants' average and standard speed during conversations on mobile phones. Research shows that drivers often engaged in various compensation approaches in an effort to maintain acceptable levels of driving performance when interacting with in-vehicle devices.

By 2020, road traffic death increased by 80% every year in developing countries. These countries have shown an increase in deaths and disabilities due to traffic accidents since the 1980s. Based on social perspective, death due to traffic accidents results in profound human grief and death, which directly and indirectly represents the loss of any country's development resources. This is because it causes people to disabled, lose their property, violates human rights, lose safety and basic freedom, and reduces access to sustainable prosperity (Meirmanov, 2014). For those reasons, this study argues that road traffic accidents are a threat to human safety, which severely affects its components such as food security, economic security, personal security, public safety, and health security.

Analysis and prevention of accidents provide a modeling approach that connects accident frequency to pavement conditions, visibility, and other influencing factors in the event of blizzard (Taimur Usman, Liping Fu, 2010). The findings of this paper can be applied to assess various maintenance strategies using safety as a performance measure. The paper describes the empirical relationship between safety and pavement conditions, and makes quantification of safety benefits more effortless (Beshah, T., Hill, 2010) by applying data mining technology that relates documented road characteristic data to accident severity in Ethiopia, and proposes regulations which the Ethiopian Traffic Agency can adopt to improve safety. Ethiopian traffic control system data comprise several aspects of the traffic system, such as traffic volume, traffic concentration, and motor vehicle accidents. This study assumes

that accidents are not randomly distributed on the sides of the road networks, and drivers are not randomly involved in accidents. Accident record has more than 40 texts, numeric, date, and time factors. Among others are vehicle registration plates and driver's names which are concealed for confidentiality purposes.

Information regarding road accidents remains unreliable in some developed countries, while other developing countries have adequate data systems. This work has produced extensive assessments of road safety status in 178 countries. Data obtained from national governments in standardized survey forms are used to recommend measures to be adopted for road safety and policies needed to reduce road accidents. It is also shown that there is no relationship between national income level and the specific fatality rate of road users (Mohan, 2011).

Methodological analysis of accident prevalence and severity distribution of traffic accident based on location, (Ahmad Hasan Nury, Jahir Bin Alam, Syeda zehan farzana, 2012), vehicles, and duration. Poisson and negative binomial regression models are precise tools in accident modeling. Personal Injury Collision (PIC) rates over the past decade on UK local highway authority (G A Hindle, 2011). Significant differences in the improvement rate are observed between the urban and rural dimensions and are highly dependent on the previous level of PIC risk. This study displays site crash scenarios under constant camera surveillance and their impact on accidents.

Road traffic accidents and deaths are a growing public health problem globally. Research has shown that road traffic accidents are the leading cause of death and disability worldwide, with a disproportionate number of them occurring in developing countries (Oduro, 2012). Road accidents are the result of many contributors including poor transportation conditions, such as failure to wear seat belts, overcrowding, and non-roadworthy vehicles. (Abraham H, Ameyu G, Lakew A, 2011). Based on the background, this article will discuss the legal consequences for traffic accident perpetrators with dead victims as well as legal considerations for perpetrators in criminal liability for traffic accidents.

RESEARCH METHODS

The research used is empirical juridical because in this study, besides being based on existing theories, it is also compared with research based on interviews and data in the field (Hidayati, A., & Hendrati, 2016). This research uses a sociological approach, a statutory

approach, a conceptual approach, and a case approach. This research on the risk of traffic accidents is an observational study that only makes observations without giving certain treatment to research subjects (Hidayati, A., & Hendrati, 2016). The data used are primary data and secondary data. Primary data is data obtained from the field through interviews. Secondary data were obtained through library research in the form of primary, secondary, and tertiary legal materials. The analytical technique used in this research is descriptive qualitative analysis.

DISCUSSION

1. Legal Consequences for Traffic Accident Perpetrators with Dead Victims

A traffic accident is an incident where a motorized vehicle collides with another object and causes damage (Saputra, 2018). In the event of a traffic accident, obviously, it involves one or more vehicles, which are driven by a driver. Those who are involved in traffic accidents must hold responsibility for all their actions and all the consequences as a result of the incident. According to Moeljatno, a legal principle states, "Without error, no crime" (Saputra, 2018).

This principle is not explicitly stated in written law but does exist in unwritten law, where this principle is acknowledged in Indonesia. Hence, a person cannot be blamable or sentenced to a criminal sentence if it is not preceded by a guilty act committed by oneself. In the explanation of Article 44 of the Criminal Code, it is stated:

- a. Abnormal cognitive. What is meant by the "cognitive" here is: the ability of mind, intelligence or reasoning. Thus, imperfect reasons are, such as: dumb, deaf, and mute since birth.
- b. Those included in altered mental are, such as: mental illness, epilepsy, and other mental conditions.
- c. According to A. Ridwan Halim, it is also stated: the perpetrators cannot be held accountable for their actions in terms of the perpetrators:
 1. Suffer from mental illness or altered mental.
 2. Imperfect or abnormal cognitive development (dumb). (Ridwan, 1995)

The ratio that exempts those referred to in Article 44 of the Criminal Code from criminal liability is that; they cannot predict or judge the consequences of their actions, thus

such actions generally result without their awareness. Therefore, those stated in the elucidation are deemed incapable of taking the responsibility for their actions. Consequently, the relationship between liability and traffic accidents is: as long as the traffic accident perpetrators are not mental, dumb, amnesic, therefore they can be held accountable for their actions before the law.

In criminal law, the legal subjects are people, in this case, are those who are legally accountable for their actions. As long as they are not mental, dumb, therefore they can be legal subjects who will later receive legal sanctions according to the applicable law (Mulyadi, 2007). In connection to traffic accidents, the following possibilities can be deduced:

1. In a traffic accident involving two motor vehicles, who one of them dies, there will be one living legal subject.
2. If three motor vehicles are involved and one person dies, two living persons will be considered as legal subjects.
3. In point 2, if the one who dies is not one of the drivers but a passenger from one of the motor vehicles, three drivers will become legal subjects.

The defendant has been legally proven to have committed a criminal act due to negligence in a traffic accident causing the death of others and minor injuries and damage to motor vehicles, therefore, the defendant is convicted to 8 (eight) months sentence. The appropriate traffic control is regulated in Article 52 to Article 87 of Law Number 22 of 2009, including: Regulating the use of traffic line or row, traffic movement, procedures for passing, procedures for encountering, procedures for turning, procedures for slowing vehicles, the position of the vehicle on the road, the distance between the vehicles, the main right at the intersection.

The first priority is the use of roads for smooth traffic, stop and parking, the use of supporting components and equipment for motorized vehicles. Warnings with sound and use of lights, herding animals and the use of non-motorized vehicles, maximum and minimum speeds, determination of the heaviest loads, and prohibition of road use. Therefore, it is essential for investigators to master the rules contained in Article 54 to Article 87 of Law Number 22 of 2009 to determine which of the drivers involved has committed an offense that resulted in the accident. Thus, to determine the legal subject in a traffic accident, it is necessary to understand the following:

1. That a traffic accident is caused by one or more violations.

2. Traffic violations can be in the form of traffic behavior violations committed by an individual.
3. Traffic violations can be in the form of violations of the technical requirements of motorized vehicles (roadworthiness).

If the National Police investigator handling the traffic accident finds that the result of an investigation at the crime scene, followed by the collection of evidence, testimony of witnesses, and the results of observations at the crime scene deduces Person A has violated the proper traffic regulations and ultimately resulted in a traffic accident, the investigator may conclude that Person A is a legal subject or as a defendant in the incident. In the event of a traffic accident resulting in death, the following possibilities are open:

1. Possibility I is negligence or the cause of the accident is the mistakes of the dead victim. The head of the Gianyar Police terms this as the at-fault victim.
2. Possibility II is negligence or the cause of the accident is the mistakes of the living driver.

These possibilities are resulted from carelessness, because of one's negligence. Thus, those careless or negligent in traffic can be the legal subject or the defendant. The defendant's determination can be directed to anyone who dies or lives. The wrong definition in Article 359 of the Criminal Code does not suffice to be interpreted as mere negligence (*culpa*) but besides being unintentional, it must also be accompanied by carelessness or negligence on the account of an individual. Consequently, anyone who experiences a traffic accident where the opponent dies regardless of individual accidentally causes death as long as one is careful, no carelessness or negligence, while the cause of the accident or negligence is on the person who dies, then the living person cannot be sentenced for violating Article 359 of the Criminal Code.

In a traffic accident with dead victims, not all of the perpetrators who are alive in the event of a traffic accident resulting in the death can be convicted according to Article 359 of the Criminal Code. Since at-fault in the article could have been committed by the other who dies. In this case, the file can be submitted, but to reduce the offender, a settlement from both parties shall be attached. Not every carelessness or negligence can be burdened to those who are alive. Many people assume that if one is involved in a traffic accident and the opponent dies, the one who lives will be imprisoned. It is not applied in every case, the negligence should be proven on whose responsible. Whether the perpetrator lives or the one negligent

dies. The grief, pain, and sadness of the victims due to accidents is another threat to personal safety, which also affects the personal well-being of the victims and their families. This also has a mental, physical, and psychological impact on the personality of the victims and their families (Hassan, 2010).

There are two possibilities in a traffic accident resulting in the victim's death, namely: (1) The legal subject is the perpetrator who is lives; (2) The legal subject is the perpetrator who dies. The investigation process refers to the prevailing laws and regulations, with the investigation outcome definitely contrasting.

2. Legal Basis for Perpetrators in Criminal Liability on Traffic Accidents

The definition of traffic according to Law Number 22 of 2009 on Traffic is the integrated system consisting of traffic, road transportation, road traffic, and transportation networks, road traffic, and transportation infrastructure, vehicles, drivers, road users as well as their management. Based on the use, road traffic and transportation play a role in society to support convenience in carrying out daily activities, as well as support national development and integration as part of efforts to promote general welfare (Santoso, 2014).

The course of the legal system in this country will illustrate the legal awareness of the people therein, in order to achieve justice and legal certainty, it appears to take a long time and is valid. This can be seen from the increasing prevalence of collusion of police against violations that occur in the community. Even in general, the existing legal issues, such as the eradication of corruption, Bank Indonesia Liquidity Support (BLBI), are even the most concerning. In fact, at the Penitentiary Institution (Lembaga Pemasyarakatan – LP) there have been transactions of illegal drugs, which were blatantly committed by the "Inmates" that directly involved "prison officers", and all of this fortifies the notion that law enforcement has not been done optimally.

The above facts are accompanied by a lack of public trust in responding to the image of law enforcement officers, from investigation, examination, prosecution, to court trial. Even worse is the increase in vigilantism, prolonged demonstrations, every community who feels aggrieved or has their rights violated acts independently without any official legal channels. This encapsulates how poor "public legal awareness" is. According to Kunarto in his book "Merenungi Kritik Terhadap POLRI" (Contemplating the Criticism of the Indonesian National Police), the aforementioned situations are influenced by three aspects:

1. Regarding the independence of law enforcement officers in examining, adjudicating, or providing legal assistance for cases that are, have been, or will be handled.
2. The emotional fragility of law enforcement officers, such as police, prosecutors, and judges as well as lawyers in defying KKN cannot do much because power is the most important and the law is the second problem.
3. Regarding the individual ability and education so that the performance of law enforcement officers in dealing with every legal issue remains far from the expectation of obtaining justice, even, it is vulnerable for law used for personal interests (Kunarto, 2006).

Traffic accidents are a health problem that is the most common cause of injuries worldwide (Kunarto, 2006). There are three factors causing accidents; human, vehicle, and environment. The most prevalent accident factor is the human factor (human error), which arises due to the negligence of the driver, the lack of understanding of motorcycle riders on road procedures, traffic ethics, and communication on the road (Sugiyanto, G., & Santi, 2016). Whether the law applies or in society or vice versa, whether traffic regulations are effective based on Law Number 22 of 2009 on Road Traffic and Transportation or vice versa, those who seek justice in the middle of social life are a series of statements related to laws themselves (Sugiyanto, G., & Santi, 2016).

Laws are established upon the will of the community collectively for order traffic, therefore it entirely depends on the awareness of the community.

The purpose of the legal awareness issue is intended as an awareness that arises in oneself, and not because of the influence or coercion of others upon judgments coming from the spirit of the community humanely, not coercion, and this can be taken as an example: the use of "seat belts" must be comprehended by wearing "seat belt." It is for the sake of own safety; in the event of an accident, it will avoid more serious consequences. Likewise, there must be self-awareness, such as the necessity and obligation to "wear a helmet" when riding a motorcycle. This equipment can be and has been proven in accident. Those who do not wear "helmet" will face more severe consequences than those who wear "helmet". Therefore, awareness should come within oneself, especially to anticipate accidents.

As happened in the case in the Gianyar Resort area, which was committed by the defendant "IMS" on Sunday, 18 February 2018, at 17.00 WITA on Jalan Umum Br. Kesian, Lebih Village, Gianyar Subsdistrict, Gianyar regency. A traffic accident involved Suzuki DK

51xx C motorbike ridden by the suspect "STI" in a collision with a Honda DK 840xx KM motorbike ridden by "IKKK" bringing "NMS". The traffic accident occurred because the suspect "STI" was negligent when driving a Suzuki DK 51xx C coming from the north and did not maintain a safe distance, eventually resulting in an accident. The accident caused injuries to the Honda DK 84xx KM motorcycle rider, while the passenger of Honda DK 84xx KM had injuries and died at Sanglah Hospital Denpasar. The damage also affected Honda DK 84xx KM motorcycle and Suzuki DK 51xx C motorbikes.

Based on the above case, evidence and indications of a criminal act can deduce that; anyone driving a motorized vehicle who due to his/her negligence, causes a traffic accident with death victims or major injured, and minor injured as referred to in Article 310 Paragraph (4) Law of the Republic of Indonesia Number 22 of 2009 Article 310 Paragraph (3) Law of the Republic of Indonesia Number 22 fYear 2009 and Article 310 Paragraph (2) Law of the Republic of Indonesia Number 22 of 2009.

To avoid protracted matters, public legal awareness in traffic can create a synergized collaboration between the community and law enforcement officers, especially the Police handling traffic issues, by disseminating Law No. 22 of 2009, through the provision of driving license strictly, considering education, psychology, and behavior, so it can reduce the accident prevalence resulting from traffic violations, whether it is in the form of signs, or correct traffic signs when parking vehicle on the side of the road must use red triangle sign as a mark that there is a vehicle parking due to damage and so on, especially when the volume of vehicles in traffic is dense and increasing.

Several aspects can reduce the perpetrators' punishment in traffic accidents, such as: accident (culpa), no conviction records, settlement between parties, giving precise information, witnesses in mitigation, and then the threat of punishment can be reduced. Thus, it can be determined that in the event of an accident or traffic violation resulting in death, the sentence can be reduced if the accident is caused by pure accident, the young age of perpetrator and settlement between the victim and the perpetrator, a straightforward statement from the perpetrator in the court trial, as well as testimony from the witness.

CONCLUSION

From the discussion, it can be determined that the legal consequences for the traffic accident perpetrators with dead victims can be punished with a minimum of 5 (five) years

imprisonment according to Article 359 of the Criminal Code. Legal considerations for perpetrators in criminal liability for traffic accidents include the element of accident, no conviction records, settlement between parties, precise information, witnesses in mitigation, thus the punishment can be reduced.

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