

SETTLEMENT OF TRAFFIC ACCIDENT CRIMINAL OFFENCES BY CHILDREN RESULTING IN THE VICTIM NOT BEING ABLE TO WORK ANYMORE THROUGH RESTORATIVE JUSTICE APPROACH

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ABSTRACT

Resolving traffic accidents involving child perpetrators can be done through a restorative justice approach, involving the perpetrator, victim, family, and community to seek a fair solution and emphasize recovery. This approach aims to hold the perpetrator accountable, ensure the victim receives justice and recovery, and ensure the community benefits by raising awareness of road safety. The legal regulation of traffic accident crimes in Indonesia is regulated in Article 310 of Law Number 22 of 2009 concerning Traffic and Road Transportation. The implementation of restorative justice in resolving traffic accident cases that result in the victim being unable to work must be applied to traffic collisions within the jurisdiction of Deli Serdang Regency. This is in line with Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, regardless of the qualifications or type of traffic accident

1. Introduction

Advances in transportation technology have led to a highly diverse and accelerated development of transportation modes in Indonesia, both by air, land, and sea. This development, particularly land transportation, has made it easier for people to move from one area to another. However, as seen in almost all major cities, it has resulted in various traffic problems, such as traffic violations, congestion, and accidents, which are becoming increasingly complex over time.

Law Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ) states that a traffic accident is an unexpected and unintentional event on the road involving a vehicle with or without other road users which results in human casualties and/or property losses.

Besides population growth and prosperity, which lead to increased travel, road

accidents are also caused by road and environmental conditions, vehicle conditions, and driver behavior. One traffic issue that requires serious attention is traffic accidents, which often begin with traffic violations.

"The traffic violations referred to are deviations from traffic laws and regulations and those who violate them are subject to criminal sanctions and the case submission process uses a fast examination procedure in accordance with Articles 207, 211 and 216 of the Criminal Procedure Code."

A common form of traffic violation on the highway is a traffic accident, which can cause damage to property or lives. It is caused by human factors, vehicles, the road, the environment, and weather. A combination of these factors can occur, for example, between humans and vehicles, such as exceeding the speed limit and then a tire bursting, resulting in a vehicle accident.

The large number of traffic accidents that occur in Indonesia has caused a new problem, namely the increasing number of traffic accidents over the past two years. This is because many motor vehicle drivers do not understand and comprehend traffic signs and how to drive well in accordance with Law Number 22 of 2009 concerning Traffic and Road Transportation, resulting in many traffic accidents

2. Research Method

This research is descriptive analytical, namely research that merely describes the condition of the object or event without any intention of drawing generally applicable conclusions. The problems formulated above will be answered or solved using an empirical legal approach method.

The type of research used in this study is normative juridical approach and supported by empirical juridical. Soerjono Soekanto mentioned the normative juridical approach (law is seen as a norm or *das sollen*), because in discussing the research problem, it uses legal materials (both written and unwritten law or both primary and secondary legal materials). Empirical approach (law as a social, cultural reality or *das sein*), because in this research, primary data obtained from the field is used.

3. Results And Discussion

To punish someone is not enough if the person has committed an act that is against the law or is unlawful. So even though the act fulfills the formulation of a crime in the law and is not justified, it does not yet fulfill the requirements for sentencing. For this reason, punishment still requires a condition, namely that the person who committed the act has a fault or is guilty (subjective guilt). Here

applies what is called "No Punishment Without Fault" (keine strafe ohne schuld or geen straf zonder schuld) or Nulla Poena Sine Culpa ("Culpa" here in the broad sense includes intent).

PH. Sutorius stated that errors consist of several elements, namely:

1. The maker must have the ability to take responsibility (Schuldfähigkeit or Zurechnungsfähigkeit): this means that the maker's mental state must be normal.
2. The spiritual relationship between the perpetrator and his actions is in the form of intent (dolus) or willfulness (culpa): these are called forms of error.
3. There is no excuse that erases the mistake or there is no excuse for forgiveness.

If these three elements are met, the person concerned can be found guilty or criminally responsible, and therefore subject to punishment. Although fault has been accepted as a determining factor in the responsibility of the perpetrator of a crime, there is still debate among experts regarding how to define fault. Different understandings of the meaning of fault can lead to differences in its application. In other words, the definition of fault itself determines the scope of the perpetrator's responsibility.

A criminal act simply refers to an act that is prohibited and threatened with punishment. A person who commits a crime is not necessarily subject to the punishment as threatened; this depends on whether the person committed the act at fault, as per the principle of responsibility in criminal law. No punishment is imposed if there is no fault (geen straf zonder schuld: *actus non facit reum nisi mens sit rea*).

Simons stated that guilt is the existence of a certain physical condition in a person who commits a crime and there is a relationship between that condition and the act committed in such a way that the person can be blamed for doing that act. Thus, for there to be guilt, two things must be considered in addition to committing a crime, namely the existence of a certain physical (mental) condition and a certain relationship between that mental condition and the act committed, so that it gives rise to the blame.

According to Bahder Johan Nasution, the forms of error consist of negligence (culpa) and intent (dolus).

1. Negligence/Negligence (Culpa).

The law does not define negligence. Only explanatory memoranda (*memori van toelichting*) state that negligence (culpa) lies between intentional and accidental. However, culpa is considered less severe than intentional. Hazewinkel Suringa states that the crime of culpa is a quasi-delict, so the sentence is reduced. According to Hazewinkel Suringa, culpa lies between intentional and accidental,

and is also known in Anglo-Saxon countries as *per infortunium*, where the killing occurred accidentally.

The government's memorandum of understanding (MvA) states that whoever commits a crime intentionally means that he is using his own abilities, whereas whoever commits a crime due to his own fault (*culpa*) means that he is using his abilities that he should have used.

While negligence (*culpa*) is generally considered a less serious offense and therefore carries a lower penalty than intentional offenses, the imposition of severe penalties for negligent acts, as stipulated in Article 359 of the Criminal Code, is actually intended for general prevention.

The crime of negligence in the formulation of the law is of two types, namely the crime of negligence (*culpa*) which causes consequences (*culpose gevolgsmisdrijven*) and that which does not cause consequences, but what is threatened with punishment is the act of carelessness itself. The difference between the two is very easy to understand, namely for negligence (*culpa*) which causes consequences, then the crime of negligence (*culpa*) is created, while for those that do not necessarily cause consequences, with negligence or lack of care itself is threatened with punishment.

2. Intention (*dolus*)

The 1809 Criminal Code (Criminal Wetboek) stated that intention is the will to do or not do an act that is prohibited or ordered by law. *Memorie Van Toelichting* (Mvt) of the Minister of Justice when submitting the Criminal Wetboek in 1881 (which became the 1915 Indonesian Criminal Code), explained that intention is interpreted as being aware of the will to commit a particular crime.

Some scholars formulate *de will* as desire, volition, volition, and actions are the implementation of the will. *De will* (will) can be directed towards prohibited actions and prohibited consequences. There are two theories related to the meaning of intention, namely the theory of will and the theory of knowledge or imagining.

According to the theory of knowledge or the theory of imagination, humans cannot possibly will a consequence because humans cannot possibly will a consequence because humans can only want, hope or imagine the existence of a consequence. Intentional if a consequence that arises from an action is imagined as the intention of that action and therefore the action in question is carried out according to the imagination that has been previously created. This theory emphasizes what the maker knows or imagines, namely what will happen when he does something.

According to Van Hattum opzet (intentionally) in linguistics means oogemark (intention), in the sense of purpose and will according to legal terms, opzetelijk (intentionally) is replaced by willens en watens (meghendaki and knowing). Pompe said, that if people interpret intention (oogemark) as a goal (bedoeling) such as the maker's plan of desire, it means there is a difference between intention (oogemark) and intention (opzet). If the intention (oogemark) is limited to the closest goal (naaste doel) of the maker, it means that the meaning of intention (oogemark) always also means intention (opzet).

There are two other terms related to intention, namely intention (voorhomen) and with prior planning (met voorberachterade). Article 35 of the Criminal Code on attempts states that attempts to commit a crime are punishable if the intention to do so is evident from the start of the implementation and the failure to complete the implementation is not solely due to one's own will.

The development of thinking in this theory has also been reflected in Indonesian judicial practice. In some of their decisions, judges not only deliberately impose sentences for certainty, but also follow other patterns. Therefore, in such judicial practice, it is very close to the value of justice because judges render decisions according to the level of culpability of the defendant.

Some also say that intent is a different kind of error than negligence. The basis is the same, namely:

1. There are acts that are prohibited and subject to criminal penalties;
2. Having the ability to be responsible
3. There is no excuse.

Intentional inner behavior is a person's defiance of a prohibition, while negligence is a lack of heed to a prohibition, resulting in carelessness in performing an act that objectively causes a prohibited situation. By stating that negligence is a form of error, it is also said that such inner behavior is colored. This means that it is always associated with an inner behavior toward an act that is legally considered wrong.

Intention and negligence are essentially the same, meaning that in the field of criminal law, negligence has a specific meaning. Fault is considered to exist if, intentionally or through negligence, an act has resulted in a situation or consequence prohibited by criminal law and is carried out responsibly.

A person's mistakes and negligence can be measured by whether the perpetrator of the crime is able to take responsibility, if his actions contain 4 (four) elements, namely:

1. Committing a criminal act (unlawful nature);
2. Above a certain age, able to take responsibility;
3. Having a form of error that is intentional

4. (Dolus) and negligence (Culpa);

5. There is no excuse for it.

A traffic accident is an unexpected and unintentional event involving a vehicle or other road users that can cause casualties and/or property damage. Traffic accidents can occur anytime and anywhere, and are unpredictable. Traffic accidents can not only cause trauma, injury, minor injuries, serious injuries, or disability, but can also result in death. A traffic accident is an unexpected and unintentional event involving a vehicle with or without other road users, resulting in human casualties (minor injuries, serious injuries, and death) and property damage.

Road traffic accidents can occur due to various factors, including human factors (road users), vehicle factors (infrastructure), road factors (infrastructure), and environmental and natural factors. Among these factors, human factors (road users) are the most decisive.

The weaknesses arising from the above factors can be overcome if drivers or riders act cautiously and carefully, obey traffic regulations, and pay attention to traffic signs. Drivers or riders' careful attention to and preparation of their vehicles before departure, as well as when driving in heavy traffic or on slippery roads, are less likely to result in accidents.

Various elements of negligence that cause accidents:

1. Negligence due to people, for example using a cell phone while driving, being tired and sleepy, driving while drunk, lack of understanding of traffic signs. To see whether someone can be held accountable in court, it must be determined whether the perpetrator of the crime made a mistake intentionally (dolus) or negligence/negligence (culpa).
2. Vehicle Negligence: Vehicle factors that frequently contribute to accidents include brake function, tire condition, and lighting. Several factors contribute to vehicle accidents, including non-standard modifications, brake failure, worn-out tires, and exceeding the vehicle's load capacity.

Based on Article 310 of the Traffic and Road Traffic Law, it can be concluded that if a driver's negligence or carelessness results in injury or death to another person, the criminal penalties are clearly stated, as stipulated in the aforementioned article. Although the Traffic and Road Traffic Law has been implemented until now, it cannot be denied that accidents still occur.

Road accidents can at least reflect the lack of legal awareness among motorists in society. This is due to the continued failure of many drivers to follow traffic rules and regulations. The increasing number of accident victims is undesirable for all parties, given the immense value of human life, which is difficult to quantify in monetary terms.

The large number of fatalities in accidents is categorized as negligent homicide, as murder in the context of positive criminal law is categorized as murder intended by the perpetrator, murder due to assault, and murder due to negligence. Negligent homicide itself is a criminal act committed by someone who does not have the intention to commit the crime. But due to carelessness, it results in another person becoming a victim. Therefore, the driver is not categorized as having intentional but rather negligent.

The person who caused the accident must be held accountable for their actions, hoping the perpetrator will be deterred and become more cautious. Being careful isn't enough to avoid accidents; driving conditions are paramount, and proper adherence to traffic laws is crucial.

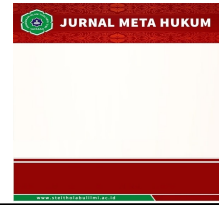
According to Article 1 number 24 of the LLAJ Law, a traffic accident is an unexpected and unintentional incident on the road involving vehicles with or without other road users that results in human casualties and/or property losses. Based on the definition of a traffic accident, it is identified that a traffic accident is an unexpected and unintentional incident, because of the unexpected and unintentional elements, it can be interpreted as negligence (negligence - culpa).

4. Conclusion

The legal provisions for criminal acts of traffic accidents in Indonesia are regulated in Article 310 of Law Number 22 of 2009 concerning Traffic and Road Transportation, which states that drivers who are negligent in driving and cause an accident that results in the death of another person, shall be punished with a maximum prison sentence of six years or a maximum fine of IDR 12,000,000 (twelve million) rupiah.

Restorative justice for traffic accidents resulting in the victim's inability to work must be implemented in traffic collisions within the jurisdiction of Deli Serdang Regency. This aligns with Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, regardless of the nature or type of traffic accident.

Obstacles to the implementation of Restorative Justice in resolving traffic accident cases that result in victims being unable to work in resolving cases have not been able to run well, due to constraints on human resources in law enforcement, and community factors



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