Legal Regulations on Road Traffic Accidents for Motorized Vehicle Owners in Indonesia

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Abstract
Regulations pertaining to the liability of motorized vehicle owners in Indonesia, as stipulated by Law Number 34 of 1964 concerning Traffic Accident Funds and Government Regulation Number 18 of 1965 regarding the Implementation Provisions of Road Traffic Accident Funds, have yet to be implemented since enactment. This is due to the lack of justice for motorized vehicle owners or operators whose vehicles are involved in accidents, but are not under their immediate control. The prevailing regulations do not adequately differentiate between individual and collective liability for traffic accidents. This study aimed to analyze the weaknesses inherent in the existing regulations, particularly in regards to the liability of motorized vehicle owners for accidents, which have not been handled with due fairness. The research paradigm seeks to examine the existing state (das sein) and the ideal state (das sollen) related to the legal liability of motorized vehicle owners.

I. Introduction

Jasa Raharja, Inc., as the provider of social accident insurance in Indonesia, carries out the entrusted mandate of Law Number 34 of 1964 concerning the Compulsory Traffic Accident Insurance Funds (hereinafter referred to as Law 34/1964) and Government Regulation Number 18 of 1965 concerning the Implementation Provisions of Traffic Accident Insurance Funds (hereinafter referred to as PP 18/1965). The administration of passenger accident insurance and road traffic accident insurance by Jasa Raharja, Inc. aims to provide fundamental protection to the public and serves as a social safety net organized

through insurance mechanisms, commonly referred to as social insurance, with mandatory participation to protect other members of society who become victims or suffer losses due to activities carried out by members of society. This particular insurance coverage is better known as *Asuransi Tanggung Gugat terhadap Pihak Ketiga* (Mertha Hapsari & Suteki, 2019) atau *Third Party Liability Insurance* (Nasution B, 2016).

In essence, Third Party Liability Insurance is designed according to the liability approach adopted by motorized vehicle owners or operators who delegate their liability to a third party, in this case, a State-owned enterprise appointed by the government to assume liability for traffic accidents. This liability delegation is manifested through risk transfer to an insurance company by premiums payment, which, in this context, is the Mandatory Contribution for the Traffic Accident Fund (Sumbangan Wajib Dana Kecelakaan Lalu Lintas Jalan or SWDKLLJ) paid by motorized vehicle owners alongside with their Motorized Vehicle Tax (Pajak Kendaraan Bermotor or PKB) at the Samsat (One-Stop Administration Services) Office.

The coverage provided by the Government is particularly limited to bodily injuries, including aspects such as medical treatment, permanent disabilities, fatalities, and burial expenses. In other words, the implementation of Law 34/1964 is commonly referred to as *Limited Third-Party Liability Insurance* (SPO SW Division, Insurance Division, 2012). The principle underlying Third Party Liability Insurance, as stipulated in Law 34/1964, is the principle of Subrogation. This legal principle entails that in cases where motorized vehicle owners, whose drivers are involved in traffic accidents while lacking a valid driver's license (abbreviated as SIM), driving under the influence of alcohol, involved in traffic violations, or failing to fulfil the mandatory SWDKLLJ contribution, they are legally obligated to reimburse the insurer (Jasa Raharja, Inc.) as the party providing indemnity to the victims. (Article 14 of PP 18/1965).

The provision outlined in Article 14 of PP 18/1965 assigns the liability for accident risks upon motorized vehicle owners. However, it is essential to note that accidents may not always directly implicate the owners as the primary cause of the accident. In other words, the legal liability for causing accidents does not invariably fall upon them. The attribution of fault or liability does not singularly pertain to motorized vehicle owners. In practical scenarios, many of them have transferred and released their ownership rights to other parties, either through sales transactions (without undergoing the process of Vehicle Ownership Transfer Tax) or via activities such as pawning, leasing, or even confiscation.

2. Research Method

This study adopted a normative juridical methodology, employing a literature review to analyze pertinent legal materials concerning the existing issues. It employed both Conceptual and Statute Approaches. The former involved an examination of statements and theories from legal experts found in relevant literature as the supporting foundation for the study. The latter entailed a comprehensive analysis of legal norms derived from legislative provisions relevant to the theme being discussed.

3. Results and Discussion

1. Legal Subjects in Road Traffic Accidents According to Law Number 22 of 2009 Concerning Road Traffic and Transportation.

In 2018, the World Health Organization (WHO) issued the Global Status Report on Road Safety (GSRRS), which highlighted the formidable challenges in achieving the target of a 50% decrease in road traffic fatalities by the year 2020. According to the data presented in the GSRRS in 2018, road traffic accidents appeared as the primary cause of mortality among the demographic of children and adolescents. Of the total fatalities resulting from road traffic accidents, approximately 50% comprised vulnerable road users, including pedestrians, cyclists, and motorcyclists.

The trend in the decrease of road traffic accident victims exhibits considerable variation across different regions worldwide, largely depending on a country's income level. It is widely evident that low-income countries suffer from a disproportionately higher fatality rate per 100.000 population in comparison to high-income countries. Notably, low-income countries exhibit an average fatality rate of 27,5 per 100.000 population, which is three times higher than the observed figure of 8,3 in high-income countries. Furthermore, significant disparities in average fatality rates were observed across regions, including Africa, America, Eastern Mediterranean, Europe, Southeast Asia, and the Western Pacific.

The World Health Organization (WHO) has highlighted several challenges that hinder the progress of Road Traffic and Transportation Safety (KLLAJ) on a global scale, particularly in low- and middle-income countries. These challenges encompass various aspects, including inadequate leadership and management capacity in KLLAJ implementation, suboptimal cross-sector coordination, insufficient integration of data and information pertaining to KLLAJ, limited and unsustainable funding resources, ineffective monitoring and evaluation mechanisms, and insufficient deterrence in law enforcement.

Within the Southeast Asian region, Indonesia holds the fourth position among countries with the highest number of road traffic accident victims (as indicated in the Annex of Presidential Regulation Number 1 of 2022). Furthermore, Indonesia has yet to establish regulations regarding blood alcohol content limits while driving, fails to adhere to vehicle safety standards according to United Nations (UN) standards, and lacks adequate provisions for protecting children during motorized vehicle travel.

Despite having regulations regarding the use of standard helmets, seat belts, and speed limits, the implementation of these rules in Indonesia has not yet reached its full potential. For instance, there is a pressing need to increase the use of standard helmets, ensuring their proper fastening ('click') for all types of personal mobility devices. Furthermore, the enforcement of seat belt usage should encompass all vehicle occupants, not solely those seated in the front as currently practiced. The establishment of an effective institutional management constitutes a fundamental aspect in the successful implementation of Road Traffic and Transportation Safety (KLLAJ) initiatives.

The World Health Organization (WHO) emphasizes the importance of establishing specialized institutions and fostering cross-sectoral and cross-regional coordination to address KLLAJ issues, particularly in formulating target-driven plans and strategies to attain desired objectives. On a global scale, out of the 175 countries involved in the 2018 report, 161 countries have already instituted or created KLLAJ institutions, adopting diverse forms, including autonomous bodies or government agencies directly mandated to address KLLAJ issues. Moreover, 140 countries have adopted national strategies concerning KLLAJ, with 132 allocating specific funding resources to implement these national strategies.

In Indonesia, over the period from 2010 to 2019, the rates of road traffic accidents remained persistently high, primarily attributed to the increasing risks stemming from population growth, the escalating number of vehicles, and the widespread use of private transportation, notably motorcycles. Moreover, efforts to reduce the number of accidents has not been optimally implemented, relying largely on conventional approaches (Soekamto, S, 1984).

According to data from the Indonesian National Police, the number of road traffic accident victims during the period from 2010 to 2020 ranged between 147.798 and 197.560 individuals, while the number of fatalities ranged between 24.336 and 32.657 individuals. Notably, in 2019 alone, the death toll reached 25,671 individuals, equivalent to an alarming rate of three deaths per hour (Afandi, F., 2015). Upon closer examination of the proportions, it becomes

apparent that the fatality rates have remained relatively stagnant, whereas severe injuries have experienced a declining trend, with a concurrent increase in cases of minor injuries. This trend suggests that the implemented Road Traffic and Transportation Safety (KLLAJ) programs have achieved some measure of success in reducing the severity of accidents from severe injuries into minor ones. Nevertheless, substantive efforts are still imperative to effectively decrease the number of fatalities arising from road traffic accidents.

Road traffic accidents represent consequential events resulting from the negligence of both motorized vehicle owners and drivers. Such incidents result in substantial material losses and can inflict injuries or fatalities. Road traffic accidents are commonly attributed to four fundamental factors (Novia Kusumastuti I.P., Astri Dyah Utami : 2014), such as human factors, vehicle factors, road factors, and environmental/weather factors. Pertinently, the drivers are not alone to be responsible for the consequences of road traffic accidents, but also are public transportation companies, which are obliged to bear the liability for compensation and, potentially, face criminal liability. This extensive spectrum of responsibilities has been comprehensively stipulated in the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as the Road Traffic Law).

Before understanding the liability of motorized vehicle owners, it is imperative to underline that, according to the Road Traffic Law, the legal subject in road traffic accidents is unequivocally the driver. Article 1, paragraph 23 of the Road Traffic Law stipulates that the driver is the individual who drives a motorized vehicle on public roads and possesses a valid Driving License (SIM). Additionally, based on Article 106 of the Road Traffic Law, drivers are obliged to drive their vehicles with due prudence and unwavering concentration, ensuring compliance with seat belt and helmet usage, conforming to Indonesian national standards. Furthermore, drivers required to prioritize the safety of pedestrians and cyclists traversing the roads.

As motorized vehicle drivers, we bear significant responsibility for both passengers within our vehicles and other road users. The legal framework governing the duties of motorized vehicle drivers is regulated in Article 234 of the Road Traffic and Transportation Law (UU LLAJ). According to the provision, in cases where a road traffic accident results in fatalities, the driver assumes specific obligations and liabilities as stipulated in Article 235, paragraphs (1) and (2) of the Road Traffic and Transportation Law.

Furthermore, the Road Traffic and Transportation Law mandates driver liability for any damages incurred, as specified in Article 236, paragraphs (1)

and (2). This article explicitly states that the party responsible for causing the road traffic accident is obliged to compensate for the damages, the amount of which shall be determined through the legal verdict of a court. The obligation to indemnify for damages stemming from road traffic accidents may also be addressed extra judicially through an amicable agreement among the involved parties.

The underlying essence of the aforementioned provisions is to unequivocally foster road and transportation safety. Emphasis is placed on the "traffic rules" and "driving requirements," thereby endowing the driver with the legal subjectivity.

2. Legal Liability for Road Traffic Accidents According to the Criminal Code (KUHP)

The current Indonesian Criminal Code (KUHP) traces its historical origins back to the colonial legal system of the Netherlands, specifically the Wetboek van Strafrecht voor Nederlandsch-Indie, which was enacted and came into effect on January 1, 1918, through the issuance of Staatsblad number 732 of 1915 (Barda Nawawi Arief in Yulius Harya Pamungkas, 2021). The legal basis for the implementation of criminal law during the colonial era commenced on February 26, 1946, with the enactment of Law Number 1 of 1946 concerning Criminal Law Regulations by the government. This legislative act served as the basis for the amendment of the Wetboek van Strafrecht voor Nederlandsch-Indie into the Wetboek van Strafrecht (WvS), later renowned as the Kitab Undang-Undang Hukum Pidana (Criminal Code).

Initially, the enactment of KUHP (Criminal Code), as stated in Article XVII of Law Number 1 of 1946 concerning Criminal Law Regulations, was stipulated solely to the regions of Java and Madura. It was not until September 29, 1958, that the Criminal Code was universally implemented across the entire territory of the Republic of Indonesia. This notable milestone was achieved through the promulgation of Law Number 73 of 1958, which formally declared the applicability of Law Number 1 of 1946 concerning Criminal Law Regulations to the entire territory of the Republic of Indonesia, while also introducing amendments to the Criminal Code. As articulated in Article 1 of Law Number 73 of 1958, the provision explicitly states: "Law No. 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations is hereby declared to be applicable throughout the territory of the Republic of Indonesia."

In the context of road traffic accidents, the Criminal Code (KUHP) addresses the culpability of both drivers and public transportation companies. Under Article 359 of the KUHP, those found responsible for causing someone's

death due to their negligence may face criminal penalties. The specific provision states:

"Anyone, due to their negligence, causes death of another person shall be subject to imprisonment for a maximum of five years or detention for a maximum of one year."

This article applies to motorized vehicle drivers who drive their vehicles at excessive speeds, leading to fatal collisions with individuals. Consequently, the provision is invoked when the victim's death occurs unintentionally or due to inadvertent actions, such as a lack of caution or attentiveness.

If the negligence leads to injuries, criminal penalties are regulated in the KUHP Article 360, paragraphs (1) and (2), which state:

"(1).Anyone, due to their negligence, causes severe injuries to another person shall be subject to imprisonment for a maximum of five years or detention for a maximum of one year."

(2). "Anyone, due to their negligence, causes injuries to another person to such an extent that it leads to illness or hinders them from carrying out their job or occupation for a specific period, shall be subject to imprisonment for a maximum of nine months or detention for a maximum of six months, or a fine of up to three hundred rupiahs."

These articles bear resemblance to Article 359 of the KUHP, with the primary distinction being that Article 359 pertains to cases resulting in the victim's death, while these articles apply when the negligence causes severe injuries or temporary impediments in carrying out one's job or occupation. The offense of road traffic accidents, as governed by the Indonesian Criminal Code (KUHP), aligns with Article 1 number 24 of the Law on Road Traffic and Transportation (UU LLAJ), which defines Road Traffic Accidents as "an unforeseen and unintentional incident involving a vehicle, with or without other road users, resulting in human casualties and/or property damage." From a legal standpoint, road traffic accidents represent a specific form of culpa or negligence offenses, wherein the actions of the perpetrator, due to negligence or carelessness, lead to victims and losses (Novia Kusumastuti I.P and Astri Dyah Utami, 2014). From its development, there are also several articles relating to Law Number : 1 of 2023 concerning the New Criminal Code (hereinafter mentioned as UU No. 1/2023 KUHP Baru) that introduces pertinent provisions, as stipulated in Article 12 paragraphs (1), (2), (3), and Article 36 paragraphs (1), (2), and Article 37:

Article 12

"(1) Criminal offenses are actions that are subject to criminal sanctions and/or actions under existing laws and regulations.

(2) To qualify as a criminal offense, an action that is subject to criminal sanctions and/or actions under laws and regulations must be unlawful or contrary to prevailing societal laws

(3) (3) Every criminal offense is inherently unlawful, except in cases where justifying reasons exist."

Article 36

"(1) Anyone can only be held liable for a criminal offense committed intentionally or due to negligence.

(2) Acts subject to criminal liability are criminal offenses committed intentionally, while criminal offenses committed due to negligence can be subject to punishment if explicitly stipulated in laws and regulations".

Article 37

"Under circumstances defined by the Law, an individual can:

a) be subject to punishment solely on the grounds of fulfilling the elements of a criminal offense, regardless of the presence of guilt; or

b) be held liable for a criminal offense committed by another person."

However, in practical application, it is often difficult to determine who is liable for road traffic accidents, particularly when multiple factors influence the occurrence of the accident, such as road conditions, weather, vehicle conditions, among others. Therefore, careful investigation and inquiry become indispensable in identifying the responsible party for the road traffic accident. In this regard, the police conduct thorough investigations to establish culpability. Subsequently, if the driver is proven to be at fault, they will be subject to criminal punishment in accordance with the provisions of Articles 359 and 360 of the criminal code. Conversely, if evidence shows that the accident occurs without any fault on the vehicle owner or driver, they will not bear legal responsibility.

3. Elements of Criminal Negligence in Road Traffic Accidents

Road traffic accidents, as defined by Article 1 number 24 of the Law on Road Traffic and Transportation (UU LLAJ), refer to unforeseen and unintentional incidents occurring on roadways, involving vehicles or other road users, resulting in human casualties and property damage (Empat Undang-Undang Transportasi, Fokus Media : 2009). Driver errors in driving vehicles often stem from the disregard for traffic regulations, such as failure to use turn signals while turning, driving on the wrong lane, not complying with other vehicles at intersections from the left side, or exceeding the speed limit indicated by traffic signs. The occurrence of accidents can be attributed to the driver's lack of caution and negligence while driving the vehicle. (Wirjono Prodjodikoro : 1967).

Driver errors that lead to fatal consequences can be considered criminal acts. In this regard, the element of negligence plays a significant role, and issues concerning negligence are codified in Chapter XXI of Book II of the Criminal

Code, spanning from Article 359 to Article 361. Criminal sanctions for drivers whose negligence causes death are stipulated in Article 359 of the Criminal Code as follows: "*Anyone, due to their negligence, causes death of another person shall be subject to imprisonment for a maximum of five years or detention for a maximum of one year.*" R. Soesilo in his explanation said that: "the death referred to herein is by no means intended by the defendant; instead, it merely arises as a consequence of the defendant's lack of care or negligence" (R. Soesilo, 1988). Hence, the perpetrator of the criminal offense in road traffic accidents causing death is the vehicle driver, as the action taken is unlawful. Such unlawfulness underscores the driver's fault, manifesting in negligence or carelessness, with the perpetrator being aware of the consequences of their actions.

Law No. 1 of 1960 on Amendments to the Criminal Code (KUHP) has intensified the punishment severity for offenses specified in Article 359 of the criminal code. This amendment aims to impose stringent sanctions against individuals liable for causing the death of others due to negligence, particularly vehicle drivers. Road traffic accidents stemming from negligence or disregard for human values can lead to collisions, falls into ravines or rivers, or vehicle rollovers due to overloading or inadequate pre-driving maintenance. All these circumstances can lead to loss of life.

According to the principle of "culpa in causa" (Moeljanto: 1985), individuals cannot avail themselves of the defense of removing criminal liability for actions or circumstances that are actually blameworthy. This assessment must be conducted with due consideration of the case in light of prevailing moral and social values. In Article 18, paragraph 3 of the Criminal Code (KUHP), which pertains to negligence or omissions, it is stipulated that if the defendant completely fails to contemplate or pay attention to the consequences of their actions due to a lack of carefulness that contradicts their legal obligations, then the act is deemed to have been committed out of negligence. Therefore, acts of negligence or omissions in traffic-related criminal offenses leading to fatal consequences must unequivocally be regarded as unlawful, given the inherent nature of the offense as one involving negligence.

Furthermore, it is imperative to assess to what extent the driver has proved caution and vigilance while driving their vehicle. An essential question arises, "Would the driver have engaged in such conduct had they been fully aware of the ensuing consequences?" Despite the driver's awareness of potential risks but hoping to evade adverse consequences, in the author's opinion, there exists an element of "intention" (dolus) in the criminal offense. The driver knows and takes into account the consequences of their actions, indicating the presence of

an intentional element. Admittedly, it is difficult to establish evidence of intent in traffic accidents resulting in fatalities. However, if the driver's behavior exceeds reasonable bounds and endangers the interests of others, more stringent sanctions (maximum imprisonment) and the suspension of their driving licenses (prohibition from driving for a specific period) become necessary to ensure that the perpetrator, namely the driver, experiences a deterrent effect and becomes more cautious in their driving conduct.

4. Justice-Based Legal Liability for Motor Vehicle Owners in Road Traffic Accidents

Article 14 of PP 18/1965 states: *Based on Article 14 of Government Regulation No. 18/1965, it stipulates: "Vehicle owners or entrepreneurs are obligated to reimburse the Company for the amount of compensation already paid by the Company to the victim's heirs, if the accident was caused by specific circumstances as follows: a. the vehicle being driven by an individual without a valid driver's license; b. the driver being influenced by illness, fatigue, consumption of alcohol or sedative substances, or other factors; c. intentional violation of Road Traffic Rules and Regulations; d. failure to fulfill obligations as stipulated in Article 2, paragraph (1) in conjunction with Article 3, paragraphs (2) and (3) of this Government Regulation. However, it is noteworthy that if the vehicle owners or operators can provide sufficient evidence that the accident occurs beyond their responsibility or without any fault on their part, they shall be exempt from such reimbursement."*

The aforementioned norm indicates that in situations where the accident meets these four conditions, the vehicle owners or operators are obligated to reimburse the Company for the amount of compensation already paid to the victim's heirs. For instance, in the accident causing a fatality, the Company, known as Jasa Raharja, grants compensation to the heirs in the amount of Rp 50.000.000 (fifty million rupiahs). Subsequently, in accordance with the stipulated regulation, the vehicle owner responsible for the accident is obligated to reimburse Jasa Raharja with the aforementioned compensation amount, which is Rp 50.000.000 (fifty million rupiahs). Endowed with a clear and well-defined legal foundation, the Company is thereby entrusted with the implementation of this provision and contribution to substantively to its organizational endeavors.

Based on the explanations of various legal provisions discussed earlier, it can be conclusively inferred that the legal liability regulations concerning road traffic accidents, particularly as imposed on motor vehicle owners in Article 14 of Government Regulation No. 18/1965, appears to exhibit certain inadequacies in upholding principles of equity and justice. This conclusion goes

along with research findings, all elements of criminal liability in traffic accidents are imposed solely on the vehicle drivers, entirely excluding any involvement of motorized vehicle owners.

In order to ensure justice for motorized vehicle owners, the author believes that reconstruction of the legal liability framework pertaining to them within traffic accident cases. Such a reconstruction should be centered on an exhaustive evaluation of the process involved in ascertaining the legal responsibility of implicated vehicle owners, with the overarching goal of aligning the established legal accountability with fundamental principles of justice.

The reconstruction of the legal liability framework for motorized vehicle owners serves as a legal procedure that necessitates a judicious determination of whether the owners bear legal culpability for actions or accidents involving their vehicles. This procedure assumes utmost importance, as it serves to attribute liability to vehicle owners for damages or injuries arising from the use of their vehicles, if it is proven that they have failed to fulfill specific obligations.

According to the author, the followings are several factors contributing to the legal liability of motorized vehicle owners:

1) the vehicle owners are inherently held liable for their vehicles due to their ownership, control, and authority over its usage;
2) even if the vehicle owners permit another person to drive their vehicle, such as an employee or agent acting on their behalf, they will retain liability for the actions of the driver;
3) the vehicle owners fail to maintain the vehicle in a safe and compliant condition with the established standards.

4. Conclusion

The legal liability of motorized vehicle owners in traffic accidents, as stipulated in Law No. 34/1964 and Article 14 of Government Regulation No. 18/1965, still lacks the sense of justice in society since the legal responsibility is solely based on the legal subject of the vehicle owners, without necessarily considering the actual driver responsible for the traffic accident.

This situation makes Jasa Raharja, Inc. unable to carry out the principle of subrogation, which involves recovering the compensation provided to motorized vehicle owners involved in accidents, who have been proven to violate the provisions of Government Regulation No. 18/1965 or have not fulfilled their obligations to pay the SWDKLLJ Compulsory Contribution to Traffic Accident Funds).

A reconstruction of government regulations needs to be established in the sense of justice so that the implementation of subrogation rights can be achieved effectively.

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