
Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

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Received : October 13, 2023

Accepted : November 24, 2023

Published : November 30, 2023

Citation: Hasbi, F, R., Utari, A, A, D., Aringga, R, D. (2023). Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents. *Sinergi International Journal of Law*, 1(3), 214-226.

ABSTRACT: Criminal responsibility leads to the prosecution of the perpetrator who has committed a criminal act and fulfills its elements as stipulated in the law. Viewed from the perspective of the occurrence of a prohibited act (obligation), an individual will be criminally accountable for such actions if they are against the law. To hold someone criminally accountable, one must consider the culpability of the perpetrator. However, it is not sufficient to consider only the culpability; one must also consider the reasons and circumstances that eliminate the penalty as outlined in Articles 44, 48, 49, 50, and 51 of the Indonesian Penal Code (KUHP). In cases where the perpetrator has met the provisions of those articles, they are exempted from the threat of criminal charges. The research method used is normative juridical, which involves legal research on primary and secondary legal materials, especially those related to the discussed subject matter. This study aims to determine how criminal responsibility is imposed on perpetrators of negligent crimes resulting in the death of others in traffic accidents. From the research findings, it is concluded that the defendant Mariyanto, based on the trial facts, did not meet the criteria set forth in Articles 44, 48, 49, 50, and 51 of the KUHP that would eliminate the penalty. Therefore, Mariyanto can be held responsible and subject to criminal accountability. Considering that the victim also bears some responsibility contributing to the commission of the offense and that the defendant had no malicious intent, posing no danger, the writer suggests that the defendant should be appropriately sentenced to probation, as proposed by Mariyanto's Legal Counsel in their plea, taking into account humanitarian and justice considerations.

Keywords: Transportation Law, Indonesian Transportation Law, Criminal Negligence In Transportation



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INTRODUCTION

With the progression of time and technology, negligent crimes are becoming increasingly prevalent. One of the fields most frequently affected by negligent crimes is transportation. The

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

negligence of an individual in operating the transportation vehicle they are using can lead to others suffering minor or severe injuries, and in some cases, even death. Numerous factors contribute to traffic accidents in the transportation sector, including: a. Human factors; b. Vehicle factors; c. Road factors; and d. Environmental factors. These factors collectively play a role in the occurrence of traffic accidents involving transportation vehicles (Monz et al., 2016).

The perpetrator of negligent crimes essentially does not intend for the consequences to occur. However, due to a lack of caution and the failure to anticipate the consequences, they can be held criminally liable under Article 359 of the Indonesian Penal Code (KUHP) or, in a more specific context (*Lex Specialis Derogat Legi Generali*), regulated under Article 310 of Law No. 22 of 2009 concerning Traffic and Road Transportation.

From several incidents that have occurred, questions often arise within the community regarding whether perpetrators of unintentional and unintended criminal acts should be punished according to existing laws, especially when the victim has opted for an amicable resolution, with the perpetrator demonstrating goodwill by offering to bear all expenses arising from the accident and considering the incident as purely accidental. In reality, negligent criminal acts are still considered a form of wrongdoing and must be processed in accordance with the applicable positive law in this country (Nur Oktrivani, 2011:4).

The negligent criminal act (*culpa*) can be committed by anyone. Due to their lack of caution and failure to anticipate possible consequences, a criminal act can occur even without prior intent from the perpetrator. For example, in a recent case at Tugu Tani, committed by Afriyani Susanti, her negligence resulted in the death of nine people. Although there was no prior intent from the perpetrator to take the lives of others, her negligence led to the loss of lives. Despite the unintended nature of the event, the perpetrator must still accept criminal responsibility for the incident.

Criminal responsibility, in foreign terms, is also referred to as "teorekenbaardheid" or "criminal responsibility," which leads to the prosecution of the perpetrator. The purpose is to determine whether a defendant or suspect is held accountable for a criminal act that has occurred or not (Chairul Huda, 2006:38).

Meanwhile, criminal responsibility can only be attributed to someone who commits a criminal act. This forms the basis for the connection between criminal responsibility and the criminal act committed by the perpetrator. Criminal responsibility is an emanation of the nature of the criminal act committed (George P. Fletcher, 2000:470). Criticism of the perpetrator stems precisely from the flaws present in their criminal act. Therefore, the scope of criminal responsibility has a significant correlation with the structure of the criminal act (Chairul Huda, 2006:68).

In the context of negligent offenses, which manifest with the occurrence of a victim, it is essential to consider the element of fault before seeking accountability. This is because a perpetrator cannot be criminally prosecuted if there is no fault (*Geen Straf zonder schuld*).

This is reinforced by Sudarto's opinion, stating that fault is the foundation for accountability. Fault, according to Sudarto, is the psychological state of the perpetrator and the internal connection between the perpetrator and their actions (Sudarto, 1983:45).

As Moeljatno suggests, for there to be fault, the defendant must (Moeljatno, 2008:177): a. Commit a criminal act (having the nature of contravening the law). b. Be of a certain age and capable of

being held responsible. c. Have a form of fault, either intentional or negligent. d. Lack grounds for pardon.

To hold the perpetrator accountable, it is not sufficient to rely solely on Moeljatno's opinion above because it is also necessary to prove the circumstances and justifying reasons that eliminate the penalty.

When it comes to traffic accidents resulting in someone's death due to the negligence of a driver, it is crucial for law enforcement officials, including investigators, prosecutors, and judges, to understand the root causes of the accident. This understanding should take into account the circumstances and justifying reasons present in the perpetrator when committing the offense. Therefore, the focus should not solely be on prosecuting the perpetrator based on the formulations of the law. Especially if the perpetrator is genuinely in a situation or has justifying reasons that qualify for the elimination of the penalty, as stipulated in Articles 44, 48, 49, 50, and 51 of the Indonesian Penal Code (KUHP).

In connection with the aforementioned details, the author is interested in conducting research with the title: "Criminal Accountability for Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents."

METHOD

The research method employed is juridical normative, which involves legal research on primary legal materials and secondary legal materials, particularly those related to the discussed subject matter. This study aims to understand the criminal responsibility of perpetrators of negligent crimes resulting in the death of others in traffic accidents.

Based on the description above, the author formulates and delimits the problem related to negligent criminal acts: How is the criminal responsibility of the perpetrator of negligent crimes that result in the death of others in traffic accidents determined?

RESULT AND DISCUSSION

1. Criminal Accountability for Perpetrators of Negligent Crimes Resulting in the Death of Others.

Criminal accountability leads to the prosecution of the perpetrator if they have committed a criminal act and meet the elements stipulated in the law. From the perspective of engaging in prohibited actions (mandatory), an individual will be criminally accountable for such actions if they are against the law. Considering the ability to be held responsible, only someone who has committed an offense can be subject to criminal accountability (M. Fadli Gumanti, 2013:45).

In accordance with Moeljatno, for there to be fault, the defendant must (Moeljatno, 2008:177): a. Commit a criminal act (having the nature of contravening the law). b. Be of a certain age and capable of being held responsible. c. Have a form of fault, either intentional or negligent. d. Lack grounds for pardon.

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

Criminal accountability is considered to exist unless there are grounds for the elimination of the penalty. The formulation of criminal accountability can be observed in the provisions of Articles 44, 48, 49, 50, and 51 of the Indonesian Penal Code (KUHP). All of these articles outline factors that can exempt the perpetrator from criminal liability. In this context, exemption can be interpreted as the absence of criminal accountability. In specific cases, it may imply the absence of fault.

Holding someone accountable in criminal law not only means legally imposing penalties on that person but also ensuring that it is entirely justified to demand accountability for the criminal act committed. Criminal accountability, first and foremost, refers to the condition present in the perpetrator when committing the criminal act. Subsequently, criminal accountability also signifies establishing a connection between the state of the perpetrator and the actions and sanctions that should be appropriately imposed.

In determining criminal accountability, judges must consider certain factors, even if they are not included in the indictment by the Public Prosecutor and are not presented by the defendant as defense reasons. Meanwhile, criminal accountability can only be imposed on someone who commits a criminal act (Chairul Huda, 2006:64-68). Therefore, before establishing someone's fault to be held accountable, it must first be proven regarding the criminal act committed by the perpetrator.

In this context, the perpetrator of a criminal act can be held accountable if their actions have been proven legitimately and convincingly to be in violation of the law. Subsequently, proof of their fault must be established, along with demonstrating the circumstances and justifying reasons for the elimination of penalties as stipulated in Articles 44, 48, 49, 50, and 51 of the Indonesian Penal Code (KUHP).

To determine whether the defendant can be held accountable in criminal law, the author will elaborate by examining relevant criminal law provisions, particularly in this case, the Indonesian Penal Code (KUHP). As mentioned earlier, criminal accountability is not explicitly regulated in the KUHP. However, Article 44, 48, 49, 50, and 51 of the KUHP specify certain reasons and circumstances that exempt someone from criminal accountability.

In Article 44 of the Indonesian Penal Code (KUHP), the state of the mind or mentality of the defendant at the time of committing the criminal act is regulated. This article serves as a reason for not punishing the defendant because their actions cannot be attributed to them due to imperfect mental capacity or a deranged mind (R. Soesilo, 1995:60-61).

According to E.Y. Kanter, an individual is considered capable of responsibility if, generally, they possess the following mental state conditions: 1). Not afflicted by continuous or temporary (temporary) mental illnesses. 2) Not impaired in growth (e.g., speech impediment, intellectual disability, and the like). 3) Not disturbed by factors such as shock, hypnotism, overwhelming anger, subconscious influences, delirium, sleepwalking, fever, and so forth. In other words, they are in a conscious state.

Mental capacity (M. Fadli Gumanti, 2013:58): 1) Can comprehend the nature of their actions, 2) Can determine the intention behind the action, whether it will be executed or not, and 3) Can recognize the wrongfulness of the action.

If related to the defendant's condition at the time of the incident, the author elaborates as follows: Mental state: 1) The defendant is not afflicted by any illness and is not impaired in growth, as

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

evidenced by their ability to operate a motor vehicle and possess a Driving License (SIM). 2) The defendant is in a conscious state, unaffected by any influences.

Mental capacity: 1) The defendant is aware of and acknowledges that their actions constitute a negligent criminal act resulting in the death of another person. 2) The defendant understands that the actions taken are wrong and against the law.

Subsequently, Article 48, which regulates coercion, specifying conditions that eliminate the offender's fault, must also be examined to determine whether these conditions are fulfilled, thereby establishing whether the perpetrator can be held accountable or not.

Article 48, which explicitly states, "Anyone who commits an act under coercion shall not be punished," serves as the basis for eliminating fault, preventing the perpetrator from being held accountable. In legal literature, coercion is typically divided into two types: the first is absolute or unconditional coercion, commonly referred to as *vis absoluta*. This form is not genuinely coercion since the perpetrator becomes a victim of another person's physical coercion, leaving them with no other choice. Another type recognized is psychological coercion (*vis compulsiva*), for example, someone who is hypnotized into committing an offense (Andi Hamzah, 2012:203).

If related to the defendant's condition at the time of the incident, the defendant was not in a state of coercion (either physical or psychological). This is evident from the testimony of witnesses stating that the defendant crossed the busway lane to quickly reach the motorcycle taxi stand to find passengers again. This means that the defendant had the opportunity or could have done something else instead of committing the offense by not crossing the busway lane. Therefore, crossing the busway lane with the hope of reaching the motorcycle taxi stand faster was a conscious act by the defendant without any coercion. There were no influencing factors involving coercion, whether physical or psychological, that forced the defendant to cross the busway lane.

To establish whether the defendant can be held criminally accountable or not, it is not sufficient to rely solely on Articles 44 and 48. It is advisable to also provide evidence in accordance with Articles 49, 50, and 51 to strengthen the conviction regarding whether the defendant can be held accountable or not.

Article 49 has regulated the conditions that eliminate the fault of the perpetrator when committing an offense. The fault is eliminated because, in this case, the perpetrator defends themselves against an attack that threatens them, others, their property, or the property of others, as well as against honor or decency.

According to Moeljatno, the term "forced defense" encompasses three meanings (Moeljatno, 2008:158): a. There must be an attack or a threat of an attack. b. There must be no other way to avert the attack or threat of attack at that moment, and c. The defensive action must be proportionate to the nature of the attack or threat of attack.

If related to the defendant based on witness statements, at that time, the defendant was riding the motorcycle at a speed of 60 km/h. When passing in front of the Police Post at Wangseng Pasar Senen, Central Jakarta, the defendant, at a distance of 50 meters, observed the victim intending to cross the road. Before the incident, the motorcycle ridden by the defendant was traveling at a high speed of approximately 60 km/h on the busway lane from the north to the south on Jalan Pasar Senen, while the victim was walking from the east to the west intending to cross the road. When the defendant crossed the Busway lane on Jl. Pasar Senen, Central Jakarta, the defendant did not attempt to reduce the speed of the motorcycle by applying the brake pedal and sounding the horn

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

as a warning signal. Due to the close proximity between the motorcycle ridden by the defendant and the victim, the defendant was unable to control the motorcycle, resulting in a collision with the victim.

The defendant was riding the motorcycle at a high speed with the intention of reaching the motorcycle taxi stand quickly to get passengers. As a result of the collision, the victim was thrown several meters, then fell onto the asphalt, experiencing a swollen lump on the back of the head and abrasions on the hands, ultimately losing consciousness.

Considering the chronology of events presented by witnesses during the trial, it can be observed that at the time of the offense, there were no attacking elements directed at the defendant. Therefore, there was no need for the defendant to engage in defense that would necessitate committing the offense. In this case, the defendant had free will to determine their actions.

Next, there are justifying reasons that legitimize a criminal act, resulting in the perpetrator not being punished. These reasons are also not explained in the Criminal Code (KUHP) but are explicitly regulated in Articles 50 and 51 of the Criminal Code.

Article 50 of the Criminal Code, which states "Anyone who performs an act to enforce a statutory regulation shall not be punished," means that a principle is established here: what has been required or commanded by the law cannot be penalized by another law. The term "law" here refers to all regulations made by a governmental body empowered to enact laws, including, for example, government regulations and regulations of regional governments such as provinces, regencies, and municipalities. "Enforcing the law" means not only limited to carrying out actions commanded by the law but is broader, including actions carried out under the authority granted by a law. To enforce legal regulations, a civil servant is allowed to use all means provided to him to overcome resistance. A civil servant is a person appointed by the state or a part of the state to perform public duties for the state or a part of the state (R. Soesilo, 1995:66).

Meanwhile, Article 51 paragraph (1) of the Criminal Code, which states "Anyone who performs an act to carry out a duty ordered by a competent authority shall not be punished," has three conditions. The first condition mentioned in this article is that the person performs the act under a duty order. The second condition is that the order must be given by an authority entitled to issue that order (R. Soesilo, 1995:67). The third condition is that the ordered command must be justifiable according to the law, meaning it must not contradict the law.

Looking at the defendant's identity stated in the verdict, which mentions that the defendant's profession is a motorcycle taxi driver, it can be concluded that the defendant does not meet the requirements as stipulated in Articles 50 and 51 of the Criminal Code as justifying reasons that exempt the defendant from criminal responsibility. As explained above, under Article 50 of the Criminal Code, the actions of the perpetrator can be justified and exempted from criminal responsibility if the actions are in accordance with the law. Similarly, under Article 51 of the Criminal Code, the perpetrator can be justified and exempted from criminal responsibility if the actions are carried out under an official order. Therefore, it is evident here that the defendant's actions, which, due to negligence, caused the death of another person who worked as a motorcycle taxi driver, cannot be justified and must still be held accountable.

Based on this description, the author argues that, according to the trial facts, the defendant has fulfilled the elements of the charges brought by the Public Prosecutor, including the alternative charges under Article 359 of the Criminal Code and Article 310 paragraph (4) in conjunction with Article 284 of Law Number 22 of 2009 concerning Road Traffic and Transportation. Additionally,

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

the conditions for criminal exemption, as stipulated in Articles 44, 48, 49, 50, and 51 of the Criminal Code, have not been met. Therefore, the defendant Mariyanto has validly and convincingly committed the crime of negligence resulting in the death of another person, and the defendant must be held accountable for his actions.

Based on this description, the author argues that, according to the trial facts, the defendant has fulfilled the elements of the charges brought by the Public Prosecutor, including the alternative charges under Article 359 of the Criminal Code and Article 310 paragraph (4) in conjunction with Article 284 of Law Number 22 of 2009 concerning Road Traffic and Transportation. Additionally, the conditions for criminal exemption, as stipulated in Articles 44, 48, 49, 50, and 51 of the Criminal Code, have not been met. Therefore, the defendant Mariyanto has validly and convincingly committed the crime of negligence resulting in the death of another person, and the defendant must be held accountable for his actions.

The author will not mention and detail each legal consideration in that verdict, but rather the considerations that, according to the author, have weaknesses or anomalies that need correction.

Considerations of the Panel: Considering that to prove the indictment, the Public Prosecutor has presented witnesses who have provided sworn testimony:

- Witness Ali Widodo, Witness Desman Nababan, Witness Moch. Ridwan, and Witness Cecep Mulyadi, who were sworn in, generally stated the following:
- That the witnesses had been examined by the Investigator/Police and their statements were the same as those in the Investigation Report.

Referring to Article 185 paragraph (1) of the Criminal Procedure Code (KUHAP) which states that "the testimony of a witness as evidence is what the witness states in a court hearing." This article suggests that the testimony of a witness is not considered evidence if given outside the court, except based on Article 162 paragraph (1) when a witness has provided statements during the investigation and has passed away or, for valid reasons, is unable to attend the court hearing after being properly summoned, or not summoned due to a distant place of residence or domicile, or for other reasons related to national interests, then their statement may be read aloud.

In the public prosecutor's indictment, it has been explained that witnesses Moch Ridwan and Cecep Mulyadi were properly summoned but could not attend due to their duties as police officers. However, during the investigation stage, the witnesses provided their statements under oath. As regulated in Article 162 paragraph (1) of the Criminal Procedure Code (KUHAP), when a witness is unable to attend due to justifiable reasons, the statements in the Criminal Investigation Report (BAP) must be read aloud in the court hearing.

In the defense plea by the lawyer on behalf of the defendant Mariyanto, it was argued that the witnesses mentioned in the Criminal Investigation Report (BAP) were never read aloud by the public prosecutor. The public prosecutor only presented Desmon Nababan and Ali Widodo as witnesses. The argument that witnesses Moch. Ridwan and Cecep Mulyadi had been sworn in during the preparation of the BAP by the police and had fulfilled the provisions of Article 162 paragraphs (1) and (2) of the Criminal Procedure Code (KUHAP) is a mistaken argument. The public prosecutor intentionally disregarded the provisions of Article 159 paragraphs (1) and (2) and Article 160 paragraph (1) letter c of the KUHAP, which explicitly state:

Article 159:

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

(1) The presiding judge of the next session examines whether all summoned witnesses have appeared and orders to prevent witnesses from communicating with each other before giving testimony in the trial.

(2) In the event a witness is absent, although validly summoned, and the presiding judge has sufficient reason to believe that the witness will not willingly appear, the presiding judge may order the witness to be brought before the trial.

Explanation of Article 159 paragraph (2):

(2) Testifying is one of the obligations of every person. A person who becomes a witness after being summoned to a court session to provide testimony but refuses to fulfill that obligation may be subject to criminal sanctions based on applicable laws, as well as experts.

Article 160:

(1) c. In the event there are witnesses, whether favorable or unfavorable to the defendant, listed in the case transfer letter and/or requested by the defendant or legal counsel or public prosecutor during the trial or before the verdict is issued, the chief judge of the session is obliged to hear the testimony of the witnesses.

In the plea, the legal counsel authorized by the defendant based on the Report of Criminal Investigation (BAP) at the Police level stated that witnesses Moch Ridwan and Cecep Mulyadi are not members of the Police but private individuals. The legal counsel explained that, in fact, witnesses Ali Widodo and Desman Nababan are the ones who are members of the Police.

Based on the above description, the author sees a contradiction between the public prosecutor's arguments in the indictment and the defense attorney's arguments in the defendant's plea. In the defendant's plea, it was explained that the testimony of witnesses Moch Ridwan and Cecep Mulyadi was not read in court. Furthermore, based on the BAP, it was explained in the plea that witnesses Moch Ridwan and Cecep Mulyadi are not members of the Police but private individuals.

Therefore, according to the author, the testimonies of Moch Ridwan and Cecep Mulyadi cannot be considered by the panel as the basis for the verdict because both witnesses, who are private workers, did not provide their testimonies in court and did not provide clear reasons for their absence, as stipulated in Article 162 paragraph (1) to testify in court.

Furthermore, in another consideration, the Panel mentioned that in this case, the Defendant did not present any witnesses favorable to him.

In his defense, it was explained that the Defendant presented 2 (two) witnesses A De Charge named Sumarno and Ichwan Dainuri. Both witnesses have provided testimonies in court under oath. These A De Charge witnesses should also be considered by the Panel to judge the Defendant for the sake of achieving material truth oriented toward justice based on the One Supreme God, as stipulated in Article 197 paragraph (1) letter d, everything that is a fact and circumstances along with evidence obtained from the trial must be considered, which then becomes the basis for determining the Defendant's guilt.

In its verdict, the Panel also considered the public prosecutor's indictment Article 310 paragraph (4) Jo. Article 284 of the Law of the Republic of Indonesia Number 22 of 2009, the elements of which are as follows: 1) Anyone; 2) Due to his fault; 3) Causes the death of a person;

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

According to the author, if the judge uses Article 310 paragraph (4) Jo. Article 284 of the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation as the basis for prosecution, then the elements of that article are incomplete. The author believes that the element "Driving a motor vehicle" as in Article 310 paragraph (3) Jo. Article 284 of the Law of the Republic of Indonesia Number 22 of 2009 also needs to be mentioned, which is then explained even though both the Public Prosecutor and the Panel of Judges argue that it does not need to be explained because it has been clearly and explicitly supported by evidence that the Defendant was driving a motor vehicle. All elements in the article need to be fully explained to clearly show that the defendant has indeed fulfilled the article, and therefore, he deserves to be sentenced.

In other considerations, the Panel of Judges has taken into account factors that may aggravate and mitigate the position of the Defendant as follows:

Aggravating factors: Due to the Defendant's negligence, the victim, Drs. H. Muhlan Sapri, passed away.

Mitigating factors:

- The defendant openly admitted his actions and expressed remorse.
- The defendant has no prior criminal record.

After reviewing the Verdict, Indictment Letter, Prosecution Letter, and Defendant's Plea on behalf of Mariyanto, the author deems it necessary to add mitigating factors for the defendant in the consideration of the Judges' Panel as part of the decision-making process.

In the testimony of two A De Charge witnesses presented by the defendant, who testified in court under oath, it was essentially stated that the defendant's family had a sincere intention to meet the victim's family to apologize and attempted to provide restitution amounting to Rp. 25,000,000 (twenty-five million Indonesian Rupiah), even though it was not accepted. It was also conveyed that the victim's family had forgiven the defendant in accordance with Islamic principles, although they were unwilling to meet the defendant's family because they could not bear to see the defendant's wife.

In the opinion of the writer, based on Article 197 paragraph (1) letter d, the testimony of these two A De Charge witnesses should be considered by the Panel of Judges as mitigating factors. This is because it reflects the efforts of the defendant's family to meet the victim's family, which involved spending travel expenses of Rp. 15,000,000 (fifteen million Indonesian Rupiah), sourced from a loan provided by PT. Dua Samudera Perkasa. Therefore, it is suggested that the Panel of Judges consider these efforts along with other mitigating factors:

- The defendant, represented by his family, has made sincere efforts to apologize and provide restitution to the victim's family.
- The defendant, who works as a motorcycle taxi driver, has the responsibility of supporting 10 children.
- The victim's family has already forgiven the defendant.

Verdict Decision:

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

Based on the legal considerations as outlined by the Panel of Judges in its Judgment Letter, the Panel of Judges adjudicates as follows:

- 1) Declares that the Defendant Mariyanto has been proven conclusively and convincingly guilty of committing the criminal act of "Due to negligence by not prioritizing the safety of pedestrians or cyclists, resulting in the death of another person."
- 2) Imposes a sentence of 6 (six) months of imprisonment on the Defendant as a result.
- 3) Decides that the defendant should be detained.
- 4) Determines the evidence in the form of:
 - 5) 1 (one) unit of Honda moped motorcycle with license plate No. B 6342 PGN to be returned to the rightful owner.
 - 6) 1 (one) sheet of vehicle registration certificate (STNK) for Honda with license plate No. B 6342 PGN to be returned to the rightful owner.
 - 7) 1 (one) sheet of driver's license (SIM C) in the name of Mariyanto to be returned to the rightful owner.
- 8) Decides that the Defendant shall bear the litigation costs in the amount of Rp. 2000,- (two thousand rupiahs).

Observing the verdict as stated above, the author believes it is necessary to review and correct it for the sake of justice. In the pursuit of justice, the author suggests that it should be noted that the offense committed by the Defendant Mariyanto is a negligence offense. According to Hazewinkel – Suringa, negligence offenses are quasi-offenses (quasidelict), thus warranting a reduction in punishment (Andi Hamzah, 2012:167).

In this matter, Vos argues that negligence entails two elements. Firstly, the Defendant did not foresee the future consequences. Secondly, the recklessness (inexcusable) of the act committed (or negligence), or in other words, there must be an action that should not be done or not done in such a manner.

Continuing with Vos, "being able to foresee a consequence" is a subjective requirement (the perpetrator must be able to foresee). To foresee requires adequate intellectual capacity to accurately predict what will happen after one does something (Andi Hamzah, 2012:168-169).

Considering the subjective qualities of the Defendant Mariyanto, who only completed education up to the junior high school level, the author argues that it is reasonable to assert that the Defendant could not foresee the consequences due to his insufficient intellectual capacity.

Examining the causes of the offense involving Defendant Mariyanto, to ensure fairness, the potential contribution of the victim, Drs. H. Muhlan Safri, MM, should also be taken into account.

Taking into account the testimonies of witnesses Ali Widodo and Desman Nababan, it is noted that the victim crossed the road not using the designated pedestrian crossing but instead through a hole in the fence. Despite the presence of a pedestrian crossing about 150 meters from the accident location, the victim knowingly violated the law. This constitutes an error on the part of the victim who consciously acted against the law.

Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

As for the violated provision, it is Article 132 paragraph (1) of Law Number 22 of 2009 concerning Traffic and Road Transportation, which states:

(1) Pedestrians are obligated to: a. Use the part of the road designated for pedestrians or the sidewalk. b. Cross the road at designated crossings.

Considering this, the author contends that both the Defendant and the Victim share a similar responsibility, thereby contributing to the undesirable consequences.

Given that substantive justice is the focus of the law, the chronology or causes of the offense must be examined in two directions—taking into account the contributions of both the Defendant and the Victim to the occurrence of the offense. It is also important to remember that the law is created for the welfare of humanity; humans are not created for the law, as emphasized by Satjipto Rahardjo.

In the case Number: 1759/Pid.B/2012/PN.Jkt.Pst involving the Defendant Mariyanto, the offense was created due to the negligence of the defendant. The offense was not based on malicious intent but rather on negligence, carelessness, lack of caution, or failure to anticipate, leading to the commission of the offense.

Knowing that there was no malicious intent in the defendant's mind and, consequently, no intention to cause harm, based on the above description, the author argues that it would be more appropriate to impose a probationary sentence on the Defendant, as requested by the Legal Counsel on behalf of Mariyanto in his Plea, considering humanitarian and justice considerations.

Based on Article 14a paragraph (1) of the Criminal Code (KUHP), which states: (1) If a Judge imposes a prison sentence of up to one year or detention, excluding substitute detention, then in the verdict, the Judge may also order that the sentence does not need to be served, unless there is a subsequent decision by the Judge determining otherwise, either because the convict commits a criminal act before the probationary period specified in the aforementioned order expires, or because the convict does not meet the specific conditions that may be stipulated in that order during the probation period.

Probation is not a type of primary or additional punishment; instead, it is a method of implementing a sentence that is carried out outside of prison under supervision. Imposing probation does not mean releasing the convict. Physically, the convict is indeed free in the sense of not being confined within society in a prison or correctional facility. However, formally, their status remains that of a convict because they have been sentenced, but with certain considerations, the sentence does not need to be served. The sentence will still be served if it turns out that the convict has violated it (Plea in Criminal Case No. 1759/Pid.B/2012/PN.Jkt.Pst, 2012:39).

As one of the goals of the law is to uphold justice, justice must also be felt by the Defendant as the perpetrator of a negligent criminal act resulting in the death of another person. This aligns with the statement of former Supreme Court Justice Bismar Siregar, who expressed, "I will prioritize justice over the law." The foundation of a judge's decision-making is "For the sake of justice," not for the law alone (Bismar Siregar, 1995:19-20). In the author's opinion, the verdict of the Panel of Judges in the judgment, which imposes a 6-month prison sentence on Defendant Mariyanto, would be perceived as just if, based on Article 14a of the Criminal Code, the sentence does not need to be served unless there is an order in the Judge's decision later on because the Defendant has committed a punishable criminal act before the specified probation period expires.

CONCLUSION

Based on the discussions in the previous sections, in this concluding section, the author formulates the conclusion that criminal responsibility is considered to exist, except when there are grounds for the elimination of punishment. The formulation of criminal responsibility can be seen from the provisions of Articles 44, 48, 49, 50, and 51 of the Criminal Code. In the case of Defendant Mariyanto, based on the trial facts, he does not meet the elements of Articles 44, 48, 49, 50, and 51 of the Criminal Code that would eliminate the punishment, thus making Defendant Mariyanto capable of assuming responsibility and being held accountable for the offense. Given the understanding that the Victim in this case also has contributory faults in the commission of the offense and the Defendant did not harbor malicious intent, resulting in no harm caused by the Defendant, the author argues that it would be more appropriate to impose probation on the Defendant, as requested by the Legal Counsel on behalf of Mariyanto in his Plea, considering humanitarian and justice considerations.

As embraced in the dualistic approach in criminal law, which signifies that besides proving the act itself, there is also a need to establish evidence related to the defendant's capacity for responsibility or the mental aspect. Therefore, in both legal processes, consistency is required to ensure that the mindset of law enforcers does not solely focus on the act itself but also delves deeper into the psychological situation and capacity for responsibility. Subsequently, the dualistic concept in a fair legal process needs to be explicitly acknowledged in the future Criminal Procedure Code (KUHAP) to ensure that judicial justice becomes more substantive.

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Criminal Liability For Perpetrators of Negligent Crimes Resulting in the Death of Others in Traffic Accidents

Hasbi, Utari, and Aringga

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