Enforcement Of Criminal Law For Motor Vehicle Drivers That Because Their Failure Results A Traffic Accident

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Abstract

In general, law enforcement is a process of endeavoring to ensure the establishment or actual functioning of legal norms as guidelines for behavior. In traffic accidents, the main cause is negligence by motorized motorists causing losses. In this case law enforcement in traffic accidents is regulated in articles 310 and 311 of Law No 22 of 2009 concerning Road Traffic and Transportation. The main problem that the author discusses is, regarding the form of negligence committed by motorists causing traffic accidents, as well as law enforcement for motorists who due to negligence results in traffic accidents based on Law No 22 of 2009 concerning Traffic and Road Transportation. The research method that I use is Normative juridical, research based on data sources in the form of applicable laws and regulations, journals or articles and theories and legal concepts and views of leading legal scholars, which aim to be able to find answers by analyzing or comparing between one another. Criminal law enforcement for motorists who due to negligence resulting in traffic accidents is analyzed using the rules that apply at this time. The results of this study can be seen from the form of the driver’s negligence and also law enforcement for the rider because of his negligence resulting in a traffic accident.

Keywords: Law enforcement, Traffic accidents

I. Introduction

Traffic and road transport are part of the dynamics of community life, which has an important role in supporting the nation’s development as part of efforts to advance the welfare of the community. Some people do traffic activities to go to places of activity such as going to work, to campus, to school, or to markets and others. Even for certain groups of people traffic activity using transportation facilities, is a very basic activity in their daily lives. From these community groups, whatever the difference is, they are both carrying out their activities which are centered on the road as a space for movement.

The problem of transportation or transportation is a problem that is always faced by countries that have developed and also by developing countries such as Indonesia, one of which is Surabaya City, as one of the cities that has a very rapid development level both in economic structure and society. As a logical consequence of the accumulation of various kinds of community activities on the road, it has caused various problems with
different risks. The higher the level of community activity on the road, the more complex the problems that will arise during traffic. Difficulties such as the increase in vehicles in the city of Surabaya, the number of motorists who violate traffic.

Traffic violations are the problem that causes most traffic accidents. Especially because of human factors as road users who do not comply with traffic regulations. But it can also be found outside of human factors such as broken tires, brake failure, road potholes, and others. Differences in the level of knowledge and understanding of the applicable regulations result in gaps that have the potential to cause problems in traffic, both between the road users themselves and between road users and the apparatus tasked with carrying out law enforcement on the highway. The ticket enforcement has not been effective until now as a tool in enforcing legislation and facilities in improving the discipline of the user community or road users, so that the number of traffic violations cannot be reduced.

As a result of traffic accidents in addition to causing casualties and property also causes financial / material losses, such as the amount of loss experienced by the driver is very concerned, if no strategic steps are taken to improve the safety and compliance of community traffic laws, it will add a long list of fatalities and material losses. The development of modern traffic on the one hand will provide facilities for road users to carry out daily activities in the context of their work, life and others. However, on the other hand, the consequences of increasingly complex problems include increasing violations, accidents, traffic jams and traffic-related crime.¹

The trend of increasing the number of traffic violations every year is an average of approximately 25%, the number of traffic accidents is approximately 8% which brings an average death toll of 31 people every day and traffic congestion, especially on roads in the city, so many cause unrest for the community. Traffic problems are caused by various factors and the most important is human factors as road users, both as drivers and road users in general. While the discipline and legal awareness of the road user community still cannot be said to be good, do not yet have compliance, obedience to follow the

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applicable laws / laws. The level of legal awareness of road users can be measured by the ability and staying power of each individual and how it is applied on the highway.

The effective functioning of the law according to observations by a number of scholars depends on the conditions of the prevailing traffic laws, the ability of law enforcement officials to take action, the traffic facilities provided and the conditions of the road user community. If these things are judged to be good, then the law referred to can function effectively and efficiently, so that the scope of the assignment given can be reasonably affordable. The cultural pattern of community capability or self-initiative system, where the community can secure themselves proportionally is a vital potential in supporting the successful implementation of the tasks carried out by the National Police.

II. Method

Research is a scientific activity related to analysis and construction carried out by certain methods, is systematic and consistent to reveal the truth. The type of research used by the author is Normative or Juridical-Normative. In connection with the type of normative juridical research, the approach used is the legal approach applicable in Indonesia (positive law) which usually uses or is based on data sources in the form of a statutory approach. Normative research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The materials are arranged then reviewed and drawn conclusions about the relationship with the problem under study.

III. Main Heading of the Analysis or Results

In Indonesia, all kinds of activities or activities that are considered to violate public law are then categorized as criminal acts regulated in the Criminal Code. Violations are regulated in Book II of the Criminal Code and Crimes are regulated in Book III of the Criminal Code. Unfortunately in the Criminal Code there are no definitions, forms, or elements of neglect, so that all of these things grow and develop from the doctrines of the experts / legal experts.

Negligence according to Andi Hamzah there are 2 types, including:

1. Bewuste schuld, namely negligence with awareness. The perpetrator realizes that his actions can endanger others, but the perpetrators assume will not happen. And continue to carry out the act consciously.

2. Onbewuste schuld, namely negligence without awareness. The perpetrator is completely unaware that his actions can endanger people.\(^3\)

In UULAJ, it is explained more specifically about the forms of negligence of motorized motorists that can cause traffic accidents. The forms of neglect are written into several chapters which the writer will describe as follows:

Article 281 UULAJ which regulates: Any person who drives a Motorized Vehicle on a Road that does not have a Driving License can be threatened with imprisonment and fines. Not having a Driving License is a form of negligence, because the legal rules in force in Indonesia require every motorist to have a Driving License to be able to drive on the Road, both an individual Driving License and a Public Driving License. Article 283 UULAJ which regulates: Any person who drives a Motorized Vehicle on the Road improperly and performs other activities or is influenced by a condition that causes concentration disturbances in driving on the Road can be threatened with imprisonment and fines. The above provisions are included in the element of negligence, because people who do not concentrate while driving, either caused by drowsiness, or the effects of alcohol, or even using a cell phone while driving can cause traffic accidents. Article 285 paragraphs (1) and (2) UULAJ which regulates: Any person who drives a motorcycle or four or more wheeled motorized vehicles on a road that does not meet the technical requirements and road worthy which includes rear view mirror, horn, headlights, backlight, vehicle body dimensioning lights, trailer lights, brake lights, pointing lights, light reflectors, speed gauges, exhaust, and tire groove depths, windshields, fenders, bumpers, couplings, attachments or glass removers can be threatened with imprisonment and fines.

For law enforcement for motorists who because of their negligence result in a traffic accident, use the concept of actual enforcement. In this theory there must be an article that is violated and added to the presence of witnesses or evidence, then based on these

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things motorists who violate traffic rules will be processed based on the provisions of the procedural law.

Efforts made by law enforcement officers based on the theory of the concept of actual enforcement to enforce traffic accidents are to:

a. Application of Law, the rule of law that applies to traffic violations is the Law Number 22 Year 2009.

b. Sentencing, motorists found guilty will be processed with sanctions according to Law No. 22 of 2009 concerning Road Traffic and Transportation.

c. Tickets, If there are motorists who do not meet the driving requirements will be given a sanction in the form of a ticket or fine in accordance with the weight of the error violated by the driver.4

Criminal sanctions for motorized motorists who for their negligence result in traffic accidents resulting in the loss of the lives of others are regulated in the following articles:

Article 310 paragraph (4) UULAJ which regulates: (4) In the case of an accident as referred to in paragraph (3) which results in another person dying, shall be liable to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah). Article 311 paragraph (5) of UULAJ regulates: (5) In the event that the acts referred to in paragraph (4) result in another person dying, the perpetrators shall be sentenced to a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp.24,000,000.00 (twenty-four million rupiah)

Criminal sanctions imposed on perpetrators of traffic accidents that result in the loss of the lives of others are regulated in the Criminal Code and Law Number 22 of 2009 concerning Road Traffic and Transportation. But with these two provisions, the Lex specialis derogate legi generalis principle is used, which means that special law overrides general law.

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4 Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. First pri, CV. Rajawali, Jakarta, p.13
IV. Conclusion

The forms of negligence committed by motorized motorists which result in traffic accidents, namely, motorized motorists both motorbikes or four-wheeled or more motorized vehicles that when driving their vehicles do not have a Driving License, driving not concentrating, not prioritizing and fulfilling safety requirements of yourself, passengers or other road users, do not meet the technical requirements and vehicle worthiness, do not give signals when driving, violate traffic rules, break through railroad doorways, and race on the highway.

Law enforcement for motorists who due to their negligence has resulted in traffic accidents under the Law Number 22 Year 2009 concerning Road Traffic and Transportation, if it is linked to Actual Enforcement law enforcement theory. Efforts can be made by law enforcers in upholding traffic accidents by implementing the applicable law, namely Law Number 22 of 2009 concerning Road Traffic and Transport, the conviction is determined based on the legal rules violated by motorists. Other efforts that can be carried out by law enforcers are conducting raids or operations with the imposition of ticket sanctions if there are motorized motorists who do not meet driving requirements in accordance with Law No. 22 of 2009 concerning Traffic and Road Transportation.

Motorized motorists who due to their negligence result in traffic accidents that result in damage to goods / objects are threatened with 6 months imprisonment and a fine of 1 million rupiah, if resulting in damage to goods / objects and minor injuries are punishable by 1 year imprisonment and 2 million rupiah in fine, if resulting in damage to goods / objects and severe injuries threatened with imprisonment of 5 years and a fine of 10 million rupiah, if resulting in damage to goods / objects and death is threatened with imprisonment of 6 years and a fine of 12 million rupiah, if the driver drives at the risk of the lives of others threatened with a prison sentence of 1 year and a fine of 3 million rupiah.
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