

# **Legal Protection for Victims of Traffic Accidents Due to Against The Law**

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## **ABSTRACT**

The occurrence of a traffic accident is an act against the law that can result in harm to other people, violators can be sentenced in the form of payment of compensation either materially or immaterially to the victim and their heirs. According to Article 1365 of the Civil Code states "every act that violates the law, which results in harm to others. It is obligatory for people who because of their actions to publish losses, are obliged to compensate for these losses", further article 1366 of the Civil Code states that "everyone is required to be responsible not only for losses caused by his actions, but for losses caused by negligence or lack of caution.

**Keywords:** Traffic Accident, Unlawful Acts, Compensation

## **1. INTRODUCTION**

In the development of development progress, especially in the field of technology that produces transportation facilities and infrastructure in the form of motorized vehicles that can be used as a means of transportation, advances in technology and transportation. Provide convenience in community relations from one area to another. The increasing use of motorized vehicles along with the development of technology and transportation with a lack of balance in transportation infrastructure in the form of road expansion and lack of public awareness in traffic, the level of traffic accidents also increases. Traffic accidents result in losses to a single party or other parties, so it is natural for the party who was harmed due to an accident to demand compensation. In this case, it will not cause problems if the driver is the owner of the vehicle itself, but in reality, like the drivers of public transportation such as public transportation, public buses only have the status of tenants or employees who are financially unable to pay compensation. So it is not uncommon to pay compensation not commensurate with the losses incurred.

The occurrence of traffic accidents is caused by carelessness or negligence of drivers who do not pay attention to existing traffic rules and signs. If the driver can obey the rules that have been set, it can reduce the occurrence of traffic accidents, but in reality the rules that have been set by law are often violated intentionally or unintentionally.

The law in addition to regulating relations between communities also has a coercive nature, so that the law can be obeyed properly. Judges and law enforcement officers are expected to restore the rights of those who feel aggrieved. One of the consequences of violating the rule of law, and also



burdening the obligation to the party causing the loss as a result of the unlawful act. A traffic accident is an act against the law that causes harm to other people, the party who violates it will get strict action in the form of punishment and are required to pay compensation both materially and immaterially to the party who has been harmed.

As a result of the driver committing an unlawful act resulting in a traffic accident that results in a loss to the victim, the party committing an unlawful act is obliged to compensate for the loss. Article 1365 of the Civil Code explains the obligation to compensate the driver of a motorized vehicle who is negligent or violates the law which causes losses in the event of a traffic accident. In fact, compensation is not fully carried out by the driver which results in a traffic accident to the victim (Iskandar T, 2017).

Compensation is generally divided into a breach of contract and a lawsuit against the law (PMH), basically compensation is a replacement in the form of money or other people's goods against someone who has been harmed. Article 1365 of the Civil Code confirms that an unlawful act (PMH) that results in a loss due to an unlawful act (PMH) to another person, then the party who commits an unlawful act is obliged to compensate for the loss. By affirming Article 1365 of the Civil Code regarding unlawful acts (PMH) that everyone has the right to claim compensation for unlawful acts (PMH) that harm him.

It can be concluded from the provisions of Article 1365 of the Civil Code, there are the following elements:

- a. There is an act against the law
- b. There is a loss
- c. There is an error
- d. There is a causal relationship between loss and action.

1. The existence of unlawful acts

Under the teachings of logic before January 31, 1919, "*onrechtmatigedaad*" (acts against the law) in a narrow sense is an act that violates the law. Breaking the law is an act that violates the subjective rights of others or is contrary to the legal obligations of the perpetrator. Arrest Cohen-lidenbaum (HR 31 January 1919) interpretation of *onrechtmatigedaad* is interpreted broadly, including the following:

- a. Violating the rights of others
- b. Contrary to decency
- c. Contrary to the legal obligations of the perpetrator

d. Contrary to prudence in society

2. The existence of an error

The second element of an unlawful act in Article 1365 of the Civil Code is the existence of an element of error in the person who commits an act against the law. In connection with the element of error in an unlawful act, that the person who commits the unlawful act is aware and knows if doing the act causes harm to other people. In connection with the element of an unlawful act, it can be interpreted that by committing an unlawful act the person already knows the consequences of the act. Even so, every unlawful act must contain an element of error in it, but in fact there are certain times that cause a person to be unable to account for his actions even though objectively it is an action that is included in an unlawful act.

A person must be responsible based on an unlawful act as stated in Article 1365 of the Civil Code, then that person must be guilty. The error must be proven by the party demanding compensation or proof from the plaintiff (Article 1365 of the Civil Code). In certain circumstances, it can eliminate the element of error, in the case of coercive circumstances or the perpetrator is mentally unsound (crazy).

3. The existence of a loss

The Civil Code Law explains that compensation includes the following matters:

- 1) Compensation for all unlawful acts (article 1365)
- 2) Compensation for actions committed by other people (article 1367)

Article 1367 (1) of the Civil Code, a person is not only responsible for losses caused by his own actions, but for losses caused by people who are his dependents or goods that are under his control. *supervision (vicarious liability)*.

- 3) Compensation for the family left behind as a result of being killed (article 1370)
- 4) Compensation for the owner of the collapsed building (article 1369)
- 5) Compensation for animal owners (article 1368)
- 6) Compensation for injuries or limb defects (article 1371)
- 7) Compensation due to acts of humiliation (1372)

In the Civil Code, it is not clear what compensation must be paid due to unlawful acts, while Article 1243 of the Civil Code contains provisions regarding compensation due to default, which can be determined to determine compensation due to an act. against the law.

4. The existence of a causal relationship between losses and actions

In the teaching of causality is very important in the field of civil law, but also in criminal law. There are 2 (two) well-known theories in this relationship, namely the Adequate veroorzaking (*von kries*) theory and the *conditio sine quanon (von buri) theory*.

## **2. RESEARCH METHODS**

In this thesis research, the type of research that will be used is normative juridical research. Normative juridical research is writing that is intended and carried out by reviewing statutory regulations and other written legal materials that are related to this research. (Soerjono Soekanto and Sri Mamudji, 2004).

Sources of legal materials in writing this research are primary and secondary sources of legal materials. Primary legal materials are legal materials that have binding legal force in the form of statutory regulations, such as the Civil Code and Law no. 22 of 2009 concerning Road Traffic and Transportation. (Peter Mahmud Marzuki, 2005)

## **3. RESULTS AND DISCUSSION**

### **On The Definition Of Unlawful**

Acts Normative acts against the law in Indonesia are based on the provisions of Article 1365 of the Civil Code. There is a uniqueness in the formulation of norms in this article, Article 1365 of the Civil Code, the formulation of norms is a structural norm in the substance of complete legal provisions. Therefore, the substance of the provisions of Article 1365 of the Civil Code always requires material outside the scope of the Civil Code, therefore acts against the law have developed based on Court decisions and the Act (Abdul Kadir Muhammad, 2014).

Acts against the law are regulated in book III of the Civil Code concerning engagement. Unlawful acts in Indonesia originating from Continental Europe are regulated in Articles 1365 to 1380 of the Civil Code, in these articles the form of responsibility for unlawful acts is regulated. Jurisprudence in Indonesia on unlawful acts has shown developments regarding interpretation in the history of civil law.

When viewed from the regulatory model in the Civil Code regarding other unlawful acts, and as in countries that adhere to the Continental European legal system, the legal responsibilities in Indonesia are as follows:

1. Responsibility with elements of error (intentional and negligence) as contained in Article 1365 of the Indonesian Civil Code.
2. Responsibility with an element of error, especially in the element of negligence as contained in Article 1366 of the Indonesian Civil Code.
3. Absolute responsibility (without error) in a narrow sense as in Article 1367 of the Civil Code.

Jurisprudence has a very important role regarding the meaning of unlawful acts, basically only two very important articles in the Civil Code that still require further interpretation or meaning. Those articles that require interpretation are Article 1365 of the Civil Code and 1366 of the Civil Code. Article 1365 of the Civil Code explains that every act that violates the law, which results in a loss, is required to compensate for the loss. Then, Article 1366 of the Civil Code explains that everyone is required to be responsible not only for losses caused by their actions, but also for losses caused by negligence and lack of caution (Suhendro, 2014).

Acts against the law according to article 1365 of the Civil Code, initially there was a narrow understanding due to the influence of the teachings of legism, the understanding held that unlawful acts were actions based on actions that were contrary to a person's legal rights and obligations according to the law. In other words, an act against the law (*onrechtmatige daad*) is also the same as an act against the law.

In Dutch the term *onrechtmatigedaad* has a very narrow meaning, namely Article 1365 *Burgerlijk Wetboek* (BW). Furthermore, it is used for the term Civil Code (KUHPerdata) as a substitute for BW. Many interpret this article differently between legal experts, some interpret it as an act that violates the law and there are also some legal experts who interpret it as an act against the law.

According to R. Wirjono Prodjodikoro *onrechtmatigedaad* defined as an act that violates the law. According to him, the meaning of the word "deed" in the words "acts violating the law" can also be interpreted as positive or negative thoughts. Covering things with silence a person can be said to violate the law because according to the law the person is acting. These negative thoughts are active, that is, a person who is silent can be called committing a legal act, if the person is aware that staying silent is violating the law. So what moves is not the person's body, but feelings and thoughts, so the moving element of the word "action" now exists. The definition of "violating" in the words "violating the law" has an active nature, so according to Wirjono Prodjodikoro the most appropriate word to explain *onrechtmatigedaad* is an act of violating the law because according to him the unlawful act is

intended for existing laws in general and applicable in Indonesia and most adhere to customary law. (R. Wirjono Prodjodikoro, 2000)

Then acts against the law are not only acts that violate the law, but actions that violate written rules such as a) actions that are contrary to the legal obligations of the perpetrator, b) violating the subjective rights of others, also c) acts that violate the law. which violates unwritten rules, namely the rules regarding decency, d) propriety, thoroughness, and prudence that should be carried out by a person in the association of community life and against public property.

According to Djunaedah Hasan, quoted by Rosa Agustina, stated that the act of violating the law is broadly defined, namely:

- a. Violating the subjective rights of others, namely violating the authority given by law to a person, jurisprudence defines subjective rights, including:
  - 1) the right to property, freedom and absolute rights
  - 2) individual rights such as freedom, honor, good name. things that violate the subjective rights of others, are against the law if the act violates the subjective rights of others. With a violation of behavior based on written or unwritten law, the perpetrator should not have violated this and according to law there is no justification.
- b. Contrary to the legal obligations of the perpetrator. Legal obligation has the meaning as a person's obligation based on the law, both written and unwritten law
- c. Contrary to decency, which is contrary to morals, as far as social life is recognized as a legal norm, Utrecht states that what is meant by decency is that all norms that exist in society are not law or religion.
- d. Contrary to the propriety that applies in the association of society towards oneself and others. This must be seriously considered regarding the interests of oneself and the interests of others which according to society is appropriate and appropriate. The following are categories that are contrary to propriety:
  - 1) Actions that can harm other people without proper interests
  - 2) Acts that are useless and which can cause harm to others, which according to normal thinking are important to pay attention to. (Rosa Agustina, 2003)

Regarding whether an action is an unlawful act, it is not enough if it is based on a violation of the rule of law, but must also be viewed from the point of view of propriety. The fact that someone has violated the rule of law can be a consideration in assessing whether the act can cause a loss that is appropriate or not with the propriety that should be done by someone in the community.

In a narrow sense, "acts against the law can be interpreted that someone who violates another person or that person has committed an act that is contrary to his own legal obligations". Arrest from Hoge Raad 1919 Number 110 Dated January 31, 1919, the meaning of an unlawful act became wider. (HF A. Volmar, 2004).

Thus, the definition of an unlawful act in the broadest sense becomes, the act does not only violate the rights of others or is contrary to the legal obligations of the perpetrator or the person committing the act. However, this act is also contrary to decency and propriety towards oneself or other people's property, which is in the social life of the community, in the sense that it is contrary to unwritten provisions, such as customs and so on.

### **Definition of Traffic**

Accident A traffic accident is an unforeseen or unintentional event that results in a vehicle or without road users which can result in human casualties and loss of property and property. A traffic accident is an event that occurs due to many unintentional factors, in the simple sense that a traffic accident can occur due to these circumstances simultaneously at a certain time at the same time.

Traffic accidents are events that cannot be predicted when and where they occur. Accidents cause a lot of losses that result in trauma, injury or disability which also results in death. Traffic accidents every year also increase and are difficult to minimize along with the increasing use of motorized vehicles.

Based on the definition of traffic accidents, it can be concluded that traffic accidents are unpredictable events caused by motorized vehicles or other road users that occur on the highway or in an open place that becomes a means of traffic resulting in damage, injury, loss. property, and more severe can cause death.

According to the LLAJ Law, traffic accidents are divided into 3 (three) types, namely:

- a. Minor traffic accidents are accidents that result in damage and loss of vehicles or property
- b. Moderate traffic accidents are accidents that result in minor injuries and loss or damage to vehicles or property
- c. Heavy traffic accidents are accidents that result in serious injuries, disability, and death.

Accidents are classified according to the number of vehicles involved in the traffic accident into:

a. A single accident is an accident that involves a motorized vehicle but does not involve other road users, for example hitting a tree, the vehicle slipping due to a slippery road, rolling over due to a blown tire.

b. Multiple Accidents are accidents caused by more than one vehicle or road user who experience an accident at the same time in the same place.

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Traffic accidents can be influenced by several factors, ranging from human factors, vehicles, road environment, described as follows:

a. Human

factors Human factors are the most influential factors in accidents, humans use the road as pedestrians and vehicle users who become victims of accidents can also be the cause of accidents. Vehicle drivers are the main factor causing accidents, almost all accidents occur due to traffic violations.

In accidents, the human factor includes all factors that have a relationship with the actions of drivers and road users that contribute to accidents. Examples of driver actions, namely: the driver's sight and hearing, the ability to make decisions and the speed of reaction in changing road conditions and the environment. Even though having driving skills is tested as a condition for obtaining a driving license, drivers can experience a high risk of accidents because they are confident in challenging situations and successfully overcome them so that the potential risk of accidents increases.

b. Vehicle factors

Motor vehicles have been designed with a safety factor to ensure the safety of the driver, the vehicle must be maintained starting from the engine, brakes, tires, lights, rear view mirrors and seat belts to function properly, so it is expected to:

1) Reduce the number of accidents

2) Reducing casualties in traffic accidents on other road users

3) Damage to motorized vehicles is a factor in traffic accidents if they are not used

properly such as road conditions or use that is not in accordance with the rules



. Several things that cause accidents due to vehicle factors, namely:

1) Brakes don't work properly, tires burst, steering isn't good, lights go out at night, these are vehicles that are not roadworthy.

2) Overloading *loading* order.

3) The vehicle light system has a purpose so that the driver can see the condition of the road in front of him or show the vehicle to other road users.

c. Road environmental conditions and natural

factors Road conditions and nature factors have an effect on traffic accidents. Damaged road conditions result in traffic accidents, malfunctioning of markings, traffic signs and Traffic Signaling Equipment properly can also cause traffic accidents. Roads are made aiming to connect from one place to another, either in the city or outside the city, the road condition factors influence events in traffic. This affects the driver in regulating the speed (Austroads, 2002).

#### **Legal Rights for Traffic Accident Victims**

Regarding traffic accidents, several parties, either directly or indirectly, become victims of traffic accidents. The party who is the direct victim of a traffic accident is the party directly involved in the traffic accident, for example, road users and property owners who experience traffic accidents. Road users can be drivers of motorized or non-motorized vehicles or passengers of vehicles, whether motorized or not, and pedestrians who use the road.

For parties who are not directly involved in a traffic accident, it is the family of the perpetrator or the victim of a traffic accident, superior or public transport entrepreneur whose subordinates or employees had a traffic accident. For the payment of compensation due to losses caused by traffic accidents involving the parties, to directly be required to compensate for the losses incurred or parties who indirectly have to compensate.

The party who must directly compensate for the loss in the event of a traffic accident is the driver whose fault causes material or immaterial losses. Meanwhile, the party who is indirectly required to compensate for the loss is the employer or entrepreneur whose subordinates or bodyguards make a mistake, causing a loss.

The compensation has been regulated in Law no. 22 of 2009 concerning Road Traffic and Transportation, where the perpetrator can also be accompanied by a civil claim for material losses caused. Prof. Andi Hamzah stated, "In various cases, if someone makes a mistake that causes harm to another person, then he is required to pay compensation". This is what is usually called "legal protection for traffic accident victims". Actually, legal protection for accident victims is not new to the

law, where at the time the Dutch East Indies government had been regulated in the *Werverkeersordonnatie* (*Stateblad* 1933 Number 86) then it was amended and added to Law no. 7 of 1951 concerning amendments and additions to the Road Traffic Law (*Wegverkeersordonnatie*, *Staatsblad* 1933 Number 86). During its development period, it was finally replaced with Law no. 3 of 1965 concerning Highway Traffic and Transportation which eventually became the first law to regulate traffic in Indonesia after Indonesia's independence. Over time, this Law was replaced by Law No. 14 of 1922 concerning Road Traffic and Transportation and finally changed to Law No. 22 of 2009 concerning Road Traffic and Transportation.

In the event of a traffic accident, the victim has the rights regulated in article 240 of the LLAJ Law which reads: The victim of a traffic accident has the right to:

"Help and care from the party responsible for the occurrence of a traffic accident and/or the government, compensation from parties who are responsible for the occurrence of traffic accidents and traffic accident compensation from the insurance company "

Based on the rights of the victim, there are parties who are required to fulfill the rights of the victim, namely the driver, owner, or public transportation company that resulted in the accident. traffic. This obligation can be seen in Article 236 of the LLAJ Law which reads:

"The party causing the traffic accident as referred to in Article 229 is obliged to compensate for the loss, the amount of which is determined based on a court decision". The obligation to compensate for the loss as referred to in paragraph (1) in the traffic accident as referred to in Article 229 paragraph (2) can be settled out of court if there is an amicable agreement between the parties involved.

The obligation to compensate for losses resulting from vehicle drivers who commit unlawful acts due to the provisions of Article 1365 of the Civil Code which stipulates that a person who is guilty of committing an unlawful act that results in harm to another person, is obliged to compensate for the loss. Over time, in practice, it often happens that a motorized vehicle driver commits an unlawful act, especially a public vehicle driver, not as the owner of the vehicle he is driving, but only as an employee or driver who works for another person or the owner of the motorized vehicle, so that In this case, if there is a traffic accident caused by the driver of a motorized vehicle who works for the owner or entrepreneur of public transportation, the owner or entrepreneur of the public transportation may be responsible for compensating the loss incurred by the worker or employee.

As in Article 1367 (3) of the Civil Code which reads, the employer or the person who appoints another person to represent his affairs, is responsible for the losses incurred by his subordinate or the

person who represents him. From several studies, bus or public transportation entrepreneurs are known to limit their responsibilities, and entrepreneurs in their agreements with drivers always state that if there is a violation of the law caused by employees, the entrepreneur is not responsible, including unlawful acts that result in traffic accidents. . because in the work agreement clause which imposes the burden on the entrepreneur and is responsible for compensating for the loss for his actions, basically the entrepreneur is not responsible for the losses arising from traffic accidents as a result of the unlawful acts of the driver or his employees. However, in practice within the scope of the District Court, even though there has been a work agreement containing a clause to free the entrepreneur from the responsibility to compensate for the losses incurred by his employees. But in reality, as well as the fact that entrepreneurs continue to make donations to help ease the burden borne by drivers or their employees, the amount of each entrepreneur is not the same. However, if the compensation by the driver or entrepreneur is deemed insufficient by the victim, but has not yet forwarded the claim for compensation to the State Court, the judge based on a sense of justice and belief will always grant the request from the victim to obtain compensation jointly and severally from the victim. the driver or the entrepreneur.

This is because the entrepreneur is an employer who can be included as a participating party responsible for losses arising from unlawful acts of his subordinates, based on Article 1367 paragraph 93 of the Civil Code. Regarding the obligations of motorized vehicle drivers who commit unlawful acts to compensate victims as a result of traffic accidents arising from the provisions of Article 1365 of the Civil Code which based on this article determines that a person guilty of committing an unlawful act resulting in harm to another person, then he must compensate for the loss.

When viewed from the provisions of Article 1365 of the Civil Code only explains about unlawful acts without explaining in detail about unlawful acts for any event, so Article 1365 of the Civil Code can be widely applied in various events. Due to the wide application of Article 1365 of the Civil Code so that it can also be applied to traffic accident problems with the conditions that must be met regarding the elements in Article 1365 of the Civil Code, namely:

- a. The existence of unlawful acts from motorized vehicle drivers
- b. There are losses caused by motorized vehicle drivers
- c. There is an error from the motorized vehicle driver
- d. There is a causal relationship between unlawful acts caused by motorized vehicle drivers and the losses incurred.

The act of violating the law in traffic accidents on the highway is a violation of the regulations that have been applied on the highway, resulting in traffic accidents but also as a result of negligence to be careful as regulated in Articles 359 and 360 of the Criminal Code (Chidir Ali, 1991).

Negligence of motorized vehicle drivers due to lack of caution, resulting in traffic accidents which ultimately lead to victims, is a mistake. As a result of perpetrators committing acts against the law, resulting in victims from road users or from the state as the owner of equipment on the highway and the highway itself. Losses arising from traffic accidents can be in the form of material or immaterial losses. The form of loss when viewed from a theory is a loss or reduction in the value of an item, additional costs incurred, and lost profits as expected. The form of theory if interpreted broadly when applied to traffic accidents can be classified into 3 parts, namely: loss, reduced value of an item, damage, costs for health care or corpses that must be incurred, and loss of profits or benefits for an item, for example. work equipment or injuries to the limbs.

The loss felt by the victim arises as a result of a traffic accident caused by an unlawful act. In this case, it shows a causal relationship between unlawful acts and losses felt by the victims of traffic accidents. If viewed from the elements of unlawful acts, especially the element of error, loss arising from a causal relationship between unlawful acts and losses incurred, then the three elements that must exist in Article 1365 of the Civil Code are fulfilled.

Thus, as a result of unlawful acts committed by the driver causing harm to the victim, therefore the driver has an obligation to pay compensation as regulated according to Article 1365 of the Civil Code. For the payment of compensation is not always in the form of money. Even though what is meant in the provisions of Article 1365 of the Civil Code is to make it possible to return suffering to its original state or at least to a state that one might believe. If an unlawful act occurs, it is better to try to return it to its previous state or a real return and if it is more appropriate than payment of compensation in the form of money, because payment with a certain amount of money is only a relative value.

The loss caused by the driver's unlawful act in the form of: destruction or damage to an item in the usual form of compensation from the driver is the return to its original form, for example a driver who crashes into a building or other vehicle will repair or replace the damage to the vehicle or building. The obligation of motorized vehicle drivers who commit acts that violate the law for compensation for losses for victims of traffic accidents is not without limits. The intended limitation is in terms of who is obliged to bear the burden to compensate the victim.

Basically, the main purpose of providing compensation is to provide justice and welfare for victims as members of the community and the benchmark is to provide opportunities for victims to develop their rights and obligations like humans in general. On that basis, the application of compensation to victims should be a combination of various approaches, both approaches in the field of social welfare and humanitarian approaches.

Regarding the status of the driver of the owner of the motorized vehicle he is driving, it can also affect the implementation of compensation for the victim, because it will be related to who must carry out compensation. In general, the legal relationship between the driver of a motorized vehicle and the owner of the vehicle he is driving has two kinds of differences, namely: the driver who is also the owner of the vehicle he is driving and the driver is a worker or employee of the owner of the vehicle he is driving. The driver is also the owner of the vehicle he is driving under Article 1365 of the Civil Code is responsible for losses that arise as a result of his unlawful act (Sudirman Kartohasdiprodjo, 1997)

. driving a motorized vehicle belonging to a friend or his own family or a driver who is driving a rented vehicle. Drivers who are employees of motorized vehicle owners are not fully responsible for losses arising from traffic accidents caused by unlawful acts caused by them. Drivers from this group are protected by Article 1367 of the Civil Code which explains that the employer is responsible for losses incurred by servants or subordinates in carrying out work for the names of the people used.

Drivers from the second category in this case, for example are drivers of motorized public transport vehicles as employees or workers of the company and drivers of motorized vehicles who drive vehicles for their employers.

### **Procedures for Traffic Accident Victims To Get Their Rights**

Protection for traffic accident victims must go through the stages of procedures that can obtain rights as victims, as follows:

1. Help and treatment, in article 240 of the LLAJ Law explains that the victim's rights can be obtained by the victim from the party responsible for the traffic accident and/or the government
2. Stop the vehicle he is driving
3. Provide assistance to victims
4. Report the accident to the nearest police
5. Provide information related to accident events. (Ari Dermawan, 2020).

### **Provision of Compensation for Traffic Accident Victims**



Legal protection for victims as a result of traffic accidents is not new, where at the time the Dutch East Indies government had regulated the *Werverkeersordonnatie* (*Stateblad* 1933 Number 86) then amended and added to Law no. 7 of 1951 concerning amendments and additions to the Road Traffic Law (*Wegverkeersordonnatie*, *Staatsblad* 1933 Number 86). During its development period, it was finally replaced with Law no. 3 of 1965 concerning Highway Traffic and Transportation which eventually became the first law to regulate traffic in Indonesia after Indonesia's independence. Over time, this Law was replaced by Law No. 14 of 1992 concerning Road Traffic and Transportation and finally changed to Law No. 22 of 2009 concerning Road Traffic and Transportation.

Violations of criminal provisions concerning traffic can be a factor in the occurrence of traffic accidents that can cause losses. Accidents that arise are not only in the form of collisions, but also between motorized vehicles and between motorized vehicles and other road users, but there are also other accidents such as passengers falling from a city bus or inter-city public transportation falling into a ravine. In this kind of accident, in general, people will question the punishment imposed on the perpetrator who was guilty of the accident. (Mariana Sutadi, 1992).

In general, regarding the obligations and responsibilities of Drivers, Motorized Vehicle Owners, and or Transportation Companies, it is regulated in Article 234 paragraph (1) of the LLAJ Law which states, "The driver, motorized vehicle owner and or public transportation company are responsible for the losses suffered by the victim. ." However, this provision will not apply if:

- a. The existence of forced circumstances that cannot be avoided or are beyond the ability of the driver
- b. Caused by the actions of the victim himself or a third party
- c. Caused by the movement of people or animals despite precautions being taken.

The party causing the accident is charged with the obligation to compensate for the loss suffered by the victim and the amount is determined by a court decision. The obligation to compensate this loss can be carried out outside the scope of the court if there has been an amicable agreement between the parties involved.

Legal protection for victims of traffic accidents in Indonesia is contained in Law No. 22 of 2009 concerning Road Traffic and Transportation. Legal protection for accident victims contains the rights obtained in the event of a traffic accident as stated in Article 240 concerning the rights obtained by traffic accident victims, namely:

- a. Compensation for the party responsible for the result of a traffic accident
- b. Treatment and assistance from parties responsible for traffic accidents and/or the government

c. Compensation for traffic accidents from the insurance company.

Help from the responsible party is an incentive measure in the form of helping the victim, bringing the victim to the hospital and paying for the treatment of the victim while in the hospital or, either in the form of outpatient or inpatient treatment with the intention of recovering the victim caused by the traffic accident. Basically, the first aid measures are not entirely provided in the form of medical treatment at the hospital. This can happen when both parties agree and the victim spontaneously prefers to go to the nearest traditional healer. Spontaneous agreement between the two parties in practice in the field can be concluded as a form of the suspect's responsibility for the rights of traffic accident victims.

Compensation is the fulfillment of the rights of traffic accident victims from the party responsible for the occurrence of traffic accidents, while Article 234 explains that:

1. Drivers, vehicle owners, and public transportation companies are charged with the obligation to compensate for losses suffered by passengers or owners of goods and/or third parties due to negligence of the driver
2. Every driver, owner of motorized vehicle, and public transportation company is obligated to be responsible for damage to roads or road equipment due to negligence or fault of the driver.
3. The provisions referred to in paragraphs (1) and (2) shall not apply if:
  - a. The existence of forced circumstances that cannot be avoided or are beyond the ability of the driver
  - b. Caused by the actions of the victim himself or a third party
  - c. Caused by the movement of people or animals even though preventive measures have been taken

The sound of Article 234 explains the obligations and responsibilities imposed on the driver, motorized vehicle owner, or public transportation company to provide compensation costs to passengers and goods owners or third parties who harmed as a result of the driver's negligence. In this case, it is explained that the parties mentioned are responsible if there is damage to the goods experienced by both the passenger and the owner of the goods. The liability of the parties previously mentioned is readjusted according to the level of error resulting from the negligence. In addition to the burden of compensation for accident victims, these parties are also charged with replacing damage to roads and road equipment caused by errors or negligence of the driver.

In the event of a traffic accident, the victim is also entitled to receive compensation for the incident. Compensation that can be obtained by victims of traffic accidents comes from insurance



companies. The insurance company that provides compensation to the victims of traffic accidents is Jasa Raharja as regulated in Law no. 33 of 1964 concerning the Mandatory Insurance Fund for passenger accidents and Law no. 34 of 1964 concerning the Road Traffic Accident Fund.

UU no. 33 of 1964 Jo Government Regulation no. 17 of 1965 who are entitled to receive accident compensation and compulsory passenger accident coverage, namely:

1. Victims who are entitled to compensation are every legitimate passenger from public transportation who has an accident, and which is caused by the use of public transportation, as long as the passenger is in transportation, namely when boarding from the place of departure to the destination.
2. Public vehicles (buses) that are on the ferry, if the ferry has an accident, the bus passengers who are victims will be given double guarantees
3. black plate car passengers who get official permits as public transportation, such as tourism cars, rental cars and others, are guaranteed by Law no. 33 of 1964 Jo Government Regulation no. 17 of 1965
4. Victims whose bodies were not found  
Victims whose bodies were not found, compensation for victims is based on the Decision of the District Court.

Based on Law no. 34 of 1964 Jo Government Regulation no. 18 of 1965 who are entitled to receive compensation for traffic accident funds are:

1. Victims who are entitled to compensation are third parties, namely:
  - a. Everyone who is outside of traffic transportation who causes an accident and becomes a victim of an accident from the use of road traffic transportation, for example: a motorcyclist crashes into a pedestrian and pedestrian
  - b. A person who is in a vehicle and is hit, while the driver of the motorized vehicle he is traveling in is not declared the cause of the accident, including in this case the passengers of motorized vehicles and private motorbikes
2. Collision of two or more motorized vehicles
  - a. If the results of the inspection report from the Police have stated that the driver who experienced the accident was the cause of the accident, then neither the driver nor the passenger of the vehicle is guaranteed by Law no. 34 of 1964 in conjunction with Government Regulation No. 18 of 1965



- b. If from the results of the investigation conclusions from the Police it is not known which of the drivers was the cause of the accident and or it can be equated that the two drivers were the cause of the accident, basically in accordance with Law no. 34 of 1964 in conjunction with Government Regulation N0 18 of 1965, the compensation cannot be submitted or postponed until there is a Judge's Decision or Court Decision
3. The hit-and-run  
case In this case, an examination or investigation is first carried out on the truth of the case
4. Traffic accidents on the railroad
  - a. Walking on railroad tracks resulting in being hit by a train, the driver or passenger of a motorized vehicle who has an accident due to train travel, the victim is guaranteed by Law no. 34 of 1964
  - b. Pedestrians or the driver/passenger of a motorized vehicle who intentionally breaks through the rail gate when going through, then if hit by a train, the victim is not guaranteed by Law no. 34 of 1964.

#### **4. CONCLUSION**

Traffic accidents are unpredictable events caused by motorized vehicles or other road users that occur on the highway. Traffic accidents occur as a result of unlawful acts of motorized vehicle drivers, unlawful acts are acts that violate the rights of others and are also contrary to decency and propriety towards themselves and other people's property. As a result of the unlawful act of the driver of the vehicle causing a traffic accident and causing harm to others, the driver who causes the loss as a result of the traffic accident may be subject to sanctions for material and immaterial damages. So as a result of the negligence of the driver in terms of checking the feasibility of the vehicle to be driven, the driver can be categorized as an act of violating the law.

Legal protection is an act to protect everyone for their rights that have been violated or harmed so that that person can feel all their rights again. The rights of victims of traffic accidents include assistance, treatment, compensation from the party responsible for the occurrence of traffic accidents and compensation for traffic accidents from the insurance company, namely PT Jasa Raharja (Persero). The victim and the driver responsible for the traffic accident can resolve the dispute through litigation or non-litigation, but if the compensation does not match the loss suffered by the victim, the victim and his/her heirs can file a claim for compensation to the perpetrator of the accident. traffic in order to receive compensation in accordance with the losses suffered or suffered.

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