



Legal protection for pedestrian victims who experience accidents in Lubuk Pakam city (study of decision number 2618/pid.sus/2021/pn lbp)

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ABSTRACT

A traffic accident is an unexpected and unintentional event on the road involving vehicles with or without other road users that results in human casualties and/or property losses. Traffic accidents are a common problem in human life that can occur due to lack of driving awareness. The type of research used in this study is normative legal research, namely legal research that places law as a building of a normative system. The normative system in question is regarding the principles, norms, rules of laws and regulations, agreements and doctrines (teachings). The location of data collection in this study was at the Gakkum Unit of the Deli Serdang Police Traffic Unit located on Jl. Sudirman, No. 18. Lubuk Pakam, North Sumatra, Indonesia. The technique of designating an abstract word that is not manifested in objects, but can only be seen in its use through: questionnaires, interviews, observations, examinations (tests), documentation, and others. Researchers can use one or a combination of techniques depending on the problem faced or studied. The data analysis technique used in this legal research uses qualitative analysis. Based on the formulation of the problem of legal protection for victims of traffic accidents, the government provides social security for the welfare of the community. Social security includes public transportation safety guarantees and health care. One of the social security provided by the government is insurance. Obstacles in the implementation of legal protection for victims of traffic accidents in Lubuk Pakam City involve various interrelated aspects. From effective law enforcement to the provision of compensation and redress, as well as legal education and awareness, various challenges must be overcome to ensure that victims get the protection and justice they need. Based on the results of the study, it can be concluded that the use of the legal basis of Article 310 paragraph (4) of Law No. 22 of 2009 in this case is valid and in accordance with the provisions in force at the time of the accident. This provision provides a more specific legal framework for traffic accident cases compared to the general criminal provisions in the Criminal Code. The use of this legal basis ensures that sanctions are imposed in accordance with applicable regulations and are relevant to the type of violation that occurs.

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1. Introduction

A traffic accident is an unexpected and unintentional event on the road involving vehicles with or without other road users that results in human casualties and/or property losses (Surapni, 2019) . Traffic accidents are a common problem in human life that can occur due to lack of driving awareness. There are four main factors that cause accidents, the first is the negligence factor of road users, the second is the vehicle factor, the third is the road factor and the last is the environmental condition factor. A combination of these four factors can occur, between road users and vehicles, for example, traveling beyond the set speed limit can then cause a tire to burst which causes the vehicle to have an accident (Sasongko, 2017) . In addition, there are still environmental conditions and weather factors that can also contribute to traffic accidents. Based on statistical data from the Indonesian National Police, a traffic accident is an unfortunate event that occurs in road traffic which is caused by at least two vehicles that cause injury, damage, or loss to their owners or victims, traffic accidents are events that are difficult to predict when and where they occur.

Many accident victims in Lubuk Pakam face difficulties in obtaining insurance claims due to several factors. First, a lack of understanding of the claims process often hinders progress, as many victims are unaware of the necessary steps to take after an accident occurs. Additionally, the required documents for filing a claim, such as police reports and medical evidence, are often incomplete or difficult to obtain, especially in areas with limited accessibility. Another factor is the skepticism of insurance companies in acknowledging liability on the part of third parties, which can lead to claim denials. Furthermore, many victims may not have adequate insurance coverage or may have policies that do not align with the type of accident experienced, resulting in ineligibility for claims. Difficulties in accessing legal support or achieving timely resolutions also contribute to this issue, creating additional barriers for victims in obtaining their rightful compensation.

According to (Lestari, 2020), traffic accidents are influenced by human, vehicle, and road environment factors, as well as the interaction and combination of two or more of these factors: 1. Human factor (human factor) human factor is the most dominant factor in accidents.

According to one of the victims of a double traffic accident that I met in Lubuk Pakam sub-district, Deli Serdang Regency, stated that accidents that often occur around the Deli Serdang Jaya Police Headquarters road occur because of damaged road infrastructure in the area, where the Deli Serdang highway has many holes and is damaged, plus the damaged road is mixed with sand piles that make the road dusty during the dry season so that the driver's visibility is disturbed and during the rainy season the Deli Serdang highway becomes muddy so that drivers have difficulty controlling their vehicles, especially for drivers who drive vehicles.

Multiple accidents at the Deli Serdang Police Station often occur, according to Law No. 34 of 1964, Article 4 paragraph 1 states that anyone who is a victim of death or permanent disability due to an accident caused by road traffic transportation as referred to in Article 1, the fund will provide losses to him or his heirs in the amount determined based on Government Regulations. This is the basis for the author to say that everyone who has an accident on the highway should get insurance rights or claims, namely getting accident compensation funds as stated in this article (Anlingga, 2020) .

However, the implementation in the field is not like that, many victims of multiple accidents at the Deli Serdang Police Department do not get their rights, this is because the many requirements that must be met by victims of multiple accidents make it difficult for them to claim accident insurance funds as stated in Article 4 paragraph 1 of Law Number 34 of 1964, they must attach proof of treatment from the hospital, while most victims of multiple accidents in Deli Serdang only seek treatment at clinics or at Puskesmas because they are constrained by costs, even though they need the compensation funds to pay for their treatment. It is sad when a

taxpayer who has fulfilled his obligation to pay annual motor vehicle tax does not get his right to claim the insurance coverage funds.

The rights of the victim received by the victim's family are in the form of compensation, hospital costs and burial costs in accordance with the court's decision. However, if there is no judge's decision to provide compensation or damages, the victim's family cannot ask the defendant for compensation. Outside the court, the defendant and the victim's family can make an agreement. However, this agreement does not eliminate the criminal acts that will be carried out by the defendant. Therefore, the trial process cannot be stopped in accordance with Article 310 of Law Number 22 of 2009

According to the description of Article 310 of the Traffic and Road Transportation Law, it can be concluded that if the driver's negligence or negligence results in injury or death to another person, the maximum criminal penalty is 6 years or a maximum fine of IDR 12 million. Although the Traffic and Road Transportation Law has been implemented, it is undeniable that the accident rate still occurs. Based on data on road accident cases, it can at least illustrate the reflection of society about how minimal legal consciousness is for drivers (Zanuardi, 2019) . This is because there are still motor vehicle drivers who are not orderly and obey traffic signs.

Based on the description of the background, the author is interested in conducting a study with the title of the thesis: "Legal Protection for Pedestrian Victims Who Experience Accidents in Lubuk Pakam City (Study of Decision Number 2618 / PID.SUS / 2021 / PN Lbp)". Based on the formulation of the problem, the objectives of this study are as follows: To determine the Legal Protection for Traffic Accident Victims in Lubuk Pakam City. To determine the legal considerations used by judges in applying criminal sanctions to Traffic Accident Victims in Lubuk Pakam City. To determine the obstacles faced in implementing legal protection for Traffic Accident Victims in Lubuk Pakam City

2. Method

The type of research used in this study is normative legal research, namely legal research that places law as a building of normative systems. The normative system in question is about the principles, norms, rules of laws and regulations, agreements and doctrines (teachings).

2.1 Data source

Data sources are places where research data is found. Data sources in this study are interviews with informants and library data that are relevant to the study. The data sources used by the author in this study are as follows: a) Primary Data, primary data is data obtained directly in the field, in this case obtained through interviews, namely a way of obtaining information by asking directly to parties related to the research problem, b) Secondary Data, secondary data includes official documents, books, research results in the form of reports and so on. Secondary data consists of Primary legal materials, namely binding legal materials. As for those used as primary legal materials related to the problems in this study.

2.2 Data Analysis Techniques

The data analysis technique used in this legal research uses qualitative analysis methods. A qualitative approach is an approach that discusses how to analyze collected data using methods or analysis or legal interpretation known as authentic interpretation, interpretation according to grammar, interpretation based on legal history, systematic interpretation, sociological interpretation, teleological interpretation, or functional interpretation.

3. Analysis and Results

3.1 Legal Protection for Traffic Accident Victims in Lubuk Pakam City

Legal Protection for Traffic Accident Victims Previously it was explained that legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection for victims as part of community protection, and can be realized in various forms such as through the provision of restitution, compensation, medical services, and legal assistance. Legal protection is a description of the functioning of the legal function to achieve legal objectives, namely justice, interests, and legal certainty. Legal protection can also be interpreted as protection provided to legal subjects according to legal principles, both preventively and coercively (repressively), written and unwritten, in the context of enforcing legal norms (Supriadi, 2019) . Legal protection for traffic accident victims in receiving compensation in the form of compensation itself is regulated by the Decree of the Minister of Finance Number Kep.15/PMK.010/2017 dated February 13, 2017. The value regulated as social insurance varies with the operator of the distribution of compensation through PT. Jasa Raharja is like compensation for injuries up to 20 million and for permanent disability or death each is given a maximum compensation of 50 million. In getting compensation for victims of traffic accidents, in addition to what has been explained above, it is also regulated in Article 234 of Law Number 22 of 2009 concerning Traffic and Road Transportation,

Article 234 of the LLAJ Law above explains the obligations and responsibilities imposed on drivers, motor vehicle owners, and/or public transportation companies to provide compensation costs to passengers, owners of goods and third parties which are caused by the driver's negligence. This explains that the parties mentioned above are responsible if there is damage to goods suffered by either passengers or owners of goods. In addition, victims also have the right to recognition, guarantees, protection, and equal treatment before the law as stated in Law Number 39 of 1999 concerning Human Rights. This legal protection is intended for victims and concerns the rights of victims related to fair treatment before the law, with the same understanding, namely protecting victims of traffic accidents in their rights, one of which is insurance which regulates guarantees and protection to obtain welfare. One of them is stated in Article 28H paragraph (3) of the 1945 Constitution,

As Article 28H paragraph (3) of the 1945 Constitution reads as follows: "Everyone has the right to social security that allows for the full development of himself as a dignified human being"

Thus, the government provides social security for the welfare of the community. Social security itself includes public transportation safety and health care. In addition, it cannot be denied that victims must know their rights and the procedures for obtaining the fulfillment of these rights, for that understanding the applicable provisions is absolutely necessary as one of the efforts that can be done, one of which is socialization by the parties related to the victim protection process. After knowing these rights, what is even more important is the courage to submit an application. Without the will and courage, it will be in vain even though these things have been regulated and there is a responsible institution. Therefore, victims must be given an understanding of certain provisions that apply absolutely so that the fulfillment of the victim's rights can be fulfilled.

The importance of legal protection for victims of traffic accidents or crimes has received serious attention, as can be seen from the formation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the UN, as a result of the Seventh United Nations Congress on the Treatment of Offenders, which took place in Milan, Italy, September 1985. The UN Declaration has also recommended that at least 4 things be considered, as follows:

Payment of compensation (restitution) by the perpetrator of a crime to the victim, his/her family or other people whose lives are formulated in the form of criminal sanctions in the

applicable laws; Material, medical, psychological and social assistance to victims, either through the State, volunteers and the community (assistance); Access to justice and fair treatment;

Article 234 of the LLAJ Law explains the obligations and responsibilities imposed on drivers, motor vehicle owners, and/or public transportation companies to provide compensation costs to passengers, owners of goods, and third parties due to driver negligence. This explains that the parties mentioned are responsible if there is damage to goods suffered by either passengers or owners of goods. The responsibility of the parties mentioned above is adjusted according to the level of error due to the negligence. In addition to the burden of replacing losses to victims of negligence, these parties are also charged with replacing damage to roads and road equipment caused by negligence or driver error. In this case, the victim of a traffic accident dies according to Article 235 of the LLAJ Law, as stated in Article 235 of Law Number 22 of 2009 as follows:

If the victim dies as a result of a traffic accident as referred to in Article 229 paragraph (1) letter c, the driver, owner and/or public transportation company are required to provide assistance to the victim's heirs in the form of medical expenses and/or funeral expenses without dropping the criminal case charges; If there is injury to the victim's body or health due to a traffic accident as referred to in Article 229 paragraph (1) letters b and c, the driver, owner and/or public transportation company are required to provide assistance to the victim in the form of medical expenses without dropping the criminal case charges.

Based on article 235 of the LLAJ Law, it is explained that drivers, owners, and/or public companies are required to provide assistance to the heirs of victims in the form of medical expenses and funeral expenses. However, providing compensation to victims of traffic accidents does not immediately cancel criminal charges against the cause of the traffic accident.

Legal protection for victims of traffic accidents is not new, during the Dutch East Indies government it was regulated in *Werkerkeersordonnantie*, *Statsblad* 1933 Number 86) then amended and supplemented by Law Number 7 of 1951 Concerning Amendments and Supplements to the Road Traffic Law (*Wegverkeersordonnantie*, *Statsblad* 1933 Number 86). In its development it was replaced by Law Number 3 of 1965 Concerning Road Traffic and Transportation which became the first Law to regulate Road Traffic and Transportation in Indonesia after Indonesia's Independence. Over time this Law was replaced by Law Number 14 of 1992 Concerning Road Traffic and Transportation and has now changed to Law Number 22 of 2009 Concerning Road Traffic and Transportation.

3.2 Legal considerations used by judges in applying criminal sanctions to traffic accident victims in Lubuk Pakam City

In analyzing the legal considerations used by judges in applying criminal sanctions in traffic accident cases, the study of decision Number 2618/Pid.Sus/2021/PN.Lbp provides in-depth insight into the ways in which the justice system handles cases involving negligence resulting in death. In this decision, the court considered various legal aspects and facts of the case to determine the appropriate sanctions for the Defendant, namely Basa Daniel Hutapea

The case centers on allegations of negligence resulting in the death of Muhammad Yusuf due to a traffic accident. The defendant, who was driving a goods pedicab, was accused of committing an act that caused a fatal accident when his pedicab overturned and hit the victim. The judge's considerations in this case were based on a number of elements that must be met in accordance with applicable legal provisions (Hadisuwito, 2020) .

According to Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation, perpetrators who are proven to have committed negligence resulting in death can be subject to a maximum prison sentence of six years and/or a fine of up to IDR 12,000,000.00. This article provides a clear legal framework regarding the sanctions that can be applied in cases of traffic accidents resulting in death, indicating that the law has strict standards for dealing with serious violations such as this.

The judge's considerations also include an evaluation of the impact of the Defendant's actions, namely the death of Muhammad Yusuf. The judge must ensure that the Defendant's actions have a direct causal relationship with the victim's death, and that the negligence is the main cause of the fatal accident. The facts revealed at trial show that the victim suffered serious injuries and died as a result of the accident caused by the Defendant's actions. This supports the argument that the element of causing death in Article 310 paragraph (4) has been fulfilled.

In determining the appropriate sanction, the judge considered various aggravating and mitigating factors. The aggravating circumstance in this case was the death of the victim as a result of the Defendant's negligence. Meanwhile, mitigating factors included the fact that the Defendant had never been convicted before, was polite during the trial, was frank, and had reconciled with the victim's family. The judge decided to impose a five-month prison sentence, considering that this sanction must be commensurate with the error committed and the purpose of the punishment.

The application of Article 310 paragraph (4) in legal practice shows how the justice system assesses negligence based on applicable legal standards. The judge must ensure that all elements of the article are met, and that the punishment imposed is proportional to the error committed. In this case, the decision to impose a five-month prison sentence reflects the application of the principle of justice that takes into account both the error aspect and mitigating factors.

This decision also reflects the application of a broader criminal law principle, namely that criminal sanctions must function not only as punishment but also as rehabilitative and preventive efforts. By considering the Defendant's attitude and efforts to reconcile, the judge demonstrated a more humane approach in sentencing, which is in line with the goal of the criminal justice system to uphold the law fairly.

Overall, the legal considerations in decision Number 2618/Pid.Sus/2021/PN.Lbp reflect how the provisions of Article 310 paragraph (4) of Law No. 22 of 2009 are applied in practice. The judge conducted an in-depth evaluation of the elements of negligence, its impact on the victim, and mitigating and aggravating factors in determining sanctions. Thus, this decision shows how the justice system handles traffic accident cases with a comprehensive and balanced approach, ensuring that justice is upheld in a manner that is in accordance with applicable legal provisions.

3.3 Obstacles faced in implementing legal protection for traffic accident victims in Lubuk Pakam City

The implementation of legal protection for traffic accident victims in Lubuk Pakam City faces various obstacles, as described in the decision of case Number 2618/Pid.Sus/2021/PN.Lbp. These obstacles cover various aspects ranging from the legal process to the implementation of victim protection. The following discussion will explain the obstacles faced based on the decision, identify the main challenges, and provide a deeper context regarding these problems.

One of the main obstacles in the implementation of legal protection is effective law enforcement. In the case of decision Number 2618/Pid.Sus/2021/PN.Lbp, there are significant challenges in ensuring that the sentence imposed on the Defendant is in accordance with the seriousness of the violation. This obstacle is often caused by:

Although the applicable law provides clear guidelines, the implementation of the law in the field often faces uncertainty. This can be caused by differences in interpretation between the parties involved, such as judges, prosecutors, and lawyers. In this case, there was a difference between the prosecutor's demands and the judge's decision regarding the severity of the sentence imposed. The prosecutor's demand for a seven-month prison sentence was considered inconsistent with the principle of substantial justice, while the judge sentenced him to five months in prison, considering that the sentence must be commensurate with the defendant's mistake.

The lengthy judicial process can lead to dissatisfaction among victims and their families. Delays in resolving cases can add to the emotional and financial burden on the victim's family. In this ruling, even though a decision has been made, the lengthy duration of the process can slow down the recovery and justice sought by the affected parties.

In addition to the law enforcement aspect, another obstacle faced is the provision of compensation for victims and their families. In this decision, the Defendant was ordered to pay court costs of Rp2,000.00, but there was no detailed explanation regarding the compensation that must be paid to the victim's family. Some obstacles in this case include:

The aspect of education and legal awareness is also an important obstacle in protecting victims of traffic accidents. In this context, some of the obstacles that arise include: The public may not be fully aware of their rights or the procedures to be followed in traffic accident cases. Inadequate legal education and counseling can reduce the effectiveness of legal protection and add to the difficulty in the law enforcement process. Lack of Training for Law Enforcers: Law enforcers, including police, prosecutors, and judges, need adequate training in handling traffic accident cases and protecting victims. Lack of training can lead to less effective case handling and hinder the achievement of justice for victims. Obstacles in the implementation of legal protection involve various factors that can affect the effectiveness of protection for victims. Some of the problems identified include: Limited Resources: Limited resources, both in terms of finances and personnel, can affect the ability of legal institutions to provide adequate protection. For example, budget shortfalls can hinder the provision of legal assistance and support needed for victims and their families. Inter-Agency Coordination: Poor coordination between various institutions, such as the police, prosecutors, and courts, can lead to obstacles in handling cases and protecting victims. Better collaborative efforts are needed to ensure that all parties involved work together to provide justice and support to victims.

Obstacles in the implementation of legal protection for traffic accident victims in Lubuk Pakam City involve various interrelated aspects. From effective law enforcement to the provision of compensation and redress, as well as legal education and awareness, various challenges must be overcome to ensure that victims get the protection and justice they need. Proper application of the law and improvements in processes and coordination between institutions will be essential to increase the effectiveness of legal protection and reduce existing obstacles.

4. Conclusion

The verdict of the case shows that the Defendant, Basa Daniel Hutapea, was proven to have fulfilled the elements of Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation. This article regulates criminal sanctions for traffic accidents resulting in death. In this case, the Defendant's negligence in driving a goods pedicab that caused the victim's death has been legally proven. The imposition of a five-month prison sentence reflects the judge's assessment of the severity of the crime committed, in line with applicable legal provisions. In imposing a sentence, the judge considered various aggravating and mitigating factors. The victim's death was an aggravating factor, while factors such as never having been convicted before, a polite attitude during the trial, an admission of negligence, and peace with the victim's family were considered mitigating factors. This assessment shows that the judge attempted to achieve a balance between giving a fair sentence and considering humanitarian aspects and the Defendant's track record. However, it is essential to recognize the significant emotional and financial impacts of the accident on the victim's family. The loss of a loved one often leads to profound emotional distress, including grief, trauma, and a sense of loss that can take years to heal. Additionally, the victim's family may face financial hardships, particularly if the deceased was a primary breadwinner. The sudden loss of income can result in difficulties meeting daily expenses, paying bills, and maintaining their standard of living. Given these factors, the question arises as to whether the imposed sentence is fair to the victim's family. While the five-month prison term may reflect the legal framework, it might not adequately compensate for the emotional and financial burdens endured by the family. A more substantial

penalty could serve as a stronger deterrent against negligent driving and provide a sense of justice for the victim's family, who are left to navigate the aftermath of this tragic event. The court's consideration of the victim's family's suffering is crucial in ensuring that justice is not only served legally but also in a manner that acknowledges the profound impact of the crime on those left behind.

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