

RECONSTRUCTION OF CRIMINAL LAW POLICY ON RECLECKNESS IN TRAFFIC CRIMES BASED ON THE VALUES OF JUSTICE

Andriyanto¹, Eko Soponyono², Bambang Tri Bawono³ and Prof. Anis Mashdurohatun⁴

1 Doctoral Program, Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

2,3,4 Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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Abstract: This study aims to analyze the weaknesses in criminal law regulations related to reckless driving in traffic accidents and to formulate a model for reconstructing just legal policy. The research method used is a normative juridical approach supported by empirical studies through case analysis, interviews with law enforcement officials, and a review of doctrine, legislation, and legal comparisons with several countries. The results indicate that the provisions in the Road Traffic and Transportation Law do not clearly differentiate between ordinary negligence (negligence) and gross recklessness (recklessness), often giving rise to legal uncertainty and injustice in the law enforcement process. Furthermore, the policy orientation still emphasizes retributive aspects, failing to accommodate the values of corrective, restorative, and preventative justice. This study proposes a reconstruction of criminal law policy by strengthening the normative definition of reckless driving, categorizing levels of culpability based on risk, updating sanctions proportionate to the impact and behavior of the perpetrator, and implementing restorative justice mechanisms in certain cases to balance the interests of victims, perpetrators, and society. This reconstruction is expected to be able to create a legal system that is fairer, more humane, and more responsive to the dynamics of traffic safety in Indonesia.

Keywords: Policy Reconstruction, Criminal Law, Recklessness, Justice Values.

1. Introduction

The dynamics of legal developments in Indonesia indicate that the current criminal justice system still faces numerous challenges. One major issue that continues to be discussed is the fairness of the application of criminal law. The current criminal justice system, both in its laws, implementing regulations, and in practice, often appears to prioritize punishment over the values of justice that should be the primary foundation of every legal process. Furthermore, the application of criminal law in Indonesia still focuses on the perpetrator of the crime rather than on restoring the rights of the victim. [1]

Criminal law is a crucial aspect of the legal system, serving to combat crime and maintain order and justice in society. [2] However, with changing times and social dynamics, criminal law policies often face challenges in their implementation. Criminal law is closely linked to the concept of punishment, which inherently causes suffering or torture. [3] In general, the goal of criminal law is to protect individual or human rights and safeguard the interests of society and the state by balancing protection against crime or reprehensible behavior with abuse of power by those in power. [4]

One of the main problems in current criminal law policy is the gap between written legal norms and the reality on the ground, which has given rise to dissatisfaction in law enforcement practices. Numerous cases demonstrate that the application of the law often does not reflect the principles of justice, both in substance and procedure. For example, there are numerous reports of discrimination in law enforcement, where certain groups are more vulnerable to criminal action than others. In this context, reconstructing criminal law policy based on values of justice is an urgent need to ensure that the law is not merely repressive but also responsive to humanitarian values and social justice. [5]

Traffic crimes are a serious problem facing many countries, including Indonesia. Data from the Indonesian National Police Traffic Corps shows that the majority of traffic accidents are caused by human error. This recklessness can lead to severe legal consequences for both perpetrators and victims. Therefore, it is crucial to reconstruct criminal law policies related to recklessness in traffic crimes with an approach based on the values of justice.

Current criminal law policies relating to traffic, particularly those contained in Law No. 22 of 2009 concerning Traffic and Road Transportation, have not fully achieved justice for all parties involved in traffic accidents. One major issue that continues to be debated is the fairness in the application of criminal law, specifically in the Criminal Code, and specifically regulated in the Law on Traffic for Children. The primary objective of traffic regulations is to ensure security, safety, order, and smooth traffic flow. The approach used still tends to be repressive and pays little attention to restorative and preventive aspects. This raises questions about the effectiveness of criminal law policies in addressing traffic recklessness. Recklessness in the context of criminal traffic law often receives insufficient attention from law enforcement. Many cases in which negligent drivers are only subject to administrative sanctions or light penalties, even though their actions cause significant harm to others. This raises questions about the effectiveness of current criminal law policies in addressing negligent behavior on the road. The value of justice is an important foundation in every criminal law policy. In the context of recklessness on the highway, justice does not only mean punishing the perpetrator, but also protecting the rights of the victim and preventing the recurrence of similar incidents in the future. [6]

The concept of justice in handling traffic crimes needs to be reconstructed by considering various aspects, such as proportionality of punishment, restitution of victims' losses, rehabilitation of perpetrators, and prevention of similar violations in the future. A comprehensive justice-based approach not only focuses on punishing perpetrators but also considers the interests of victims and the wider community. Efforts to reconstruct criminal law policy regarding recklessness in traffic crimes are crucial given the social, economic, and psychological impacts of traffic accidents. Furthermore, the categorization and gradation of recklessness in traffic crimes need to be reviewed to determine more proportional and just sanctions.

In an effort to reconstruct criminal law policy related to recklessness or carelessness in traffic crimes, it is necessary to conduct an in-depth analysis of the concept of justice and how this can be applied in the criminal law system. This policy reconstruction aims to create a legal system that is fairer and more effective in handling cases of recklessness or carelessness in traffic crimes. Justice is a complex concept and can be defined in various ways. In the context of criminal law, justice is often interpreted as the fair and impartial application of the law. To reconstruct criminal law policy related to recklessness or carelessness, it is necessary to consider how justice can be applied in this context. Therefore, researchers are interested in conducting research entitled "Reconstruction of Criminal Law Policy on Recklessness in Traffic Crimes Based on Justice Values".

2. Research Methods

The researcher applied empirical legal research techniques (socio-legal research). Empirical legal research is conducted using a case study approach that emphasizes legal behavior in society. The data sources used are primary and secondary data sources. Primary data sources are data collected directly by the researcher from sources who have information relevant to the topic being studied. The primary data sources in this study were obtained from field studies. The researcher chose West Java Province as the research location. [7] Data related to the phenomenon of recklessness or carelessness in traffic crimes were obtained through interviews and observations. Meanwhile, secondary data sources are information that serves to support the primary data that has been obtained. The secondary data sources applied in this study include various archives related to the phenomenon of recklessness or carelessness in traffic crimes. In addition, the researcher also utilized various references such as books and regulations related to the topic discussed. And the data collection techniques were carried out through interviews, observation, and documentation. [8]

3. Results and Discussion

3.1. Criminal Law Policy on Recklessness

As a nation governed by law, Indonesia requires all its citizens to adhere to established regulations. These regulations serve not only to maintain order in society but also to protect citizens from arbitrary actions by state officials while carrying out their duties. [9] Legal protection is crucial in a nation governed by law, and this is realized through the existence of specific legal regulations. [10] The goal is to guarantee legal protection and certainty for citizens. Based on this principle, all areas of law, including criminal law, have a dual purpose: to regulate and protect citizens. In essence, criminal law mandates that citizens comply with applicable provisions. Furthermore, criminal law provides protection to the public through the principle of legality, a crucial principle. [11]

Criminal law in Indonesia is regulated in two categories: first, general criminal law, which is contained in the Criminal Code (KUHP). [12] Second, special criminal law, which is contained outside the KUHP. Furthermore, criminal acts are also divided into two types based on the nature of the act: first, violations, namely acts that violate the rule of law (onwet), but are not essentially considered highly reprehensible acts. Second, crimes, namely acts that are universally considered highly reprehensible and prohibited, whether based on moral, religious, or ethical norms. Crimes are often referred to as malaperse because of their inherently bad nature and universal recognition. [13]

Over time, various new types of crimes have emerged that are not covered by the Criminal Code (KUHP). Therefore, special criminal laws (special delicten) have been created that are regulated outside the KUHP. One example of this special criminal law is Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law). This regulation is considered important because traffic accidents can harm others, both physically and reduce their rights, such as the right to feel safe and comfortable while driving. [14]

The Road Traffic and Transportation Law (LLAJ Law) is an example of a special criminal law that functions as a *lex specialis* (more specific law), namely, it only regulates crimes related to traffic accidents. Meanwhile, the Criminal Code (KUHP) is general in nature. The principle of *lex specialis derogat legi generali* (more specific law overrides more general law) applies here. This means that if a case involves traffic, the LLAJ Law must be applied because it is more specific and relevant than the Criminal Code.

According to Wirjono Prodjodikoro, special criminal law has unique characteristics or "deviations" from general criminal law, both in material and formal terms. These special characteristics make it relevant to regulate specific substances that fall outside the scope of the Criminal Code. Therefore, the LLAJ Law is applied specifically to criminal cases related to traffic and accidents. The primary purpose of this law is to ensure traffic safety, order, and smooth flow, as well as to protect the public from the potential dangers posed by traffic accidents.

3.2. Traffic Crime Policy Due to Recklessness (Recklessness) from the Perspective of Justice Values

Traffic accident victims have rights regulated in Articles 240 and 241 of Law Number 22 of 2009. Traffic accident perpetrators have several rights that must be considered. One of these is the right to legal representation. Accident perpetrators suspected of violating the law or causing an accident have the right to be tried according to applicable law. [15]

In this case, they have the right to obtain legal counsel, either a private advocate or legal aid provided by the state, especially if the perpetrator is financially incapacitated. Furthermore, perpetrators also have the right to be treated fairly during the investigation and trial process. The right to non-discriminatory treatment and the right to appeal against decisions that are unfavorable to them are also part of the protection of perpetrators' rights. [16] On the other hand, traffic accident victims have rights that must be protected in order to ensure justice and recovery for them. One of the main rights possessed by victims is the right to receive compensation for the losses they have suffered. This compensation covers physical, psychological, and material losses. Victims have the right to receive adequate medical care without financial constraints, whether through insurance, social security, or liability from the perpetrator. If the victim dies, the rights of heirs to receive compensation or benefits must also be fulfilled in accordance with applicable law. [17]

Furthermore, victims also have the right to protection from the police and related institutions. This includes the right to receive clear information regarding the accident investigation process and the right to submit reports and

evidence to support their claims. Legally, victims also have the right to participate in the judicial process as witnesses or injured parties, with the aim of ensuring that their rights are recognized and pursued.

However, in traffic accidents, both perpetrators and victims can sometimes face complex situations. Perpetrators may attempt to defend themselves by claiming negligence or the existence of circumstances that contributed to the accident. On the other hand, victims who suffer serious injuries or material losses often face challenges in obtaining appropriate compensation. Therefore, it is crucial to adhere to the principle of justice in upholding the rights of both parties, while ensuring that perpetrators are held accountable for their actions and that victims receive adequate compensation.

Law enforcement in Indonesia must be in accordance with the public's sense of justice, while maintaining legal certainty for every individual citizen, an expression of democratic values in a democratic state. The interconnectedness of democratic values and the elements of the rule of law can be said to be just law enforcement that benefits and protects the rights of citizens in a democratic state.

3.3. The Concept of Recklessness in Traffic Crimes in Indonesia

The current traffic situation in Indonesia remains quite concerning. We still encounter frequent negligence on the part of road users, leading to a relatively high number of accidents. Human factors are the biggest contributor to this situation, compared to other factors such as road conditions and vehicle factors. [18]

A traffic accident is an act of negligence, which is also a criminal act, and a criminal act certainly requires responsibility from the perpetrator. Negligence is a criminal act that is not intended by the perpetrator. Negligence is usually also called a mistake, carelessness, or negligence (*culpa*). The meaning of *culpa* is a mistake in general, but in legal science it has a technical meaning, namely a type of error by the perpetrator of a criminal act that is not as serious as intentional, namely a lack of caution so that unintentional consequences occur. That in essence *culpa* includes a lack of (careful) thinking, lack of knowledge, or acting less directed. *Culpa* here clearly refers to a person's psychic (soul) abilities and therefore it can be said that *culpa* means not or less real anticipation (in advance of the possibility of occurrence) of the fatal consequences of someone's actions.

The crime of *Culpa* or in criminal law known as negligence (*negligence*) is an act that is prohibited and is threatened with punishment. Although in general for crimes it is necessary to have intent, but for some of them it is determined that in addition to intent, a person can also be punished if the error is in the form of negligence. Negligence exists when a person continues to do the act even though he has known or suspected the consequences. Article 359 of the Criminal Code: "Anyone who due to his negligence causes the death of another person, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year." The law does not provide a definition of what negligence is. Only the explanatory memorandum states that negligence (*culpa*) lies between intent and coincidence. However, *culpa* is considered lighter than intent. The definition of violation is *overtredingen* or violation means an act that violates something and is related to the law, meaning nothing other than an unlawful act. The difference between these two types of criminal acts (crimes and violations) is not qualitative, but only quantitative, namely that crimes are generally threatened with heavier penalties than violations and this seems to be based on the more serious nature of the crime.

The driver's carelessness often causes victims, whether the victim suffers serious injuries or dies, and often even causes the closest people such as family, wife, or even their own children to become victims. Some traffic accidents that occur can actually be avoided if road users can behave in a disciplined, polite and respectful manner where the use of the road is regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation. According to Article 310 of Law Number 22 of 2009 concerning Traffic and Road Transportation, if the driver's negligence or negligence results in other people being injured, whether minor or serious, or even dying, then the threat of criminal penalties. [19] as regulated in the articles. Article 234 paragraph (3) of Law Number 22 of 2009 concerning Traffic and Road Transportation states that the provisions of Article 234 in paragraphs (1) and (2) of Law Number 22 of 2009 concerning Traffic and Road Transportation.

In Indonesian criminal law, recklessness, or *culpa*, is a form of wrongdoing that arises not from intent (*dolus*), but rather from negligence, carelessness, or failure to observe the rule of caution. In the case of a traffic accident, this

form of recklessness can include:

- a. Driving over the speed limit.
- b. Disobeying traffic signs.
- c. Using a vehicle that is not roadworthy.
- d. Driving while tired, drowsy, or under the influence of alcohol or drugs.

3.4. Weaknesses of Criminal Law Policy Related to Recklessness in Traffic Crimes Reviewed from a Justice Perspective

Traffic accidents in Indonesia remain a major cause of death and high socio-economic losses. Thousands of lives are lost each year due to reckless driver behavior, such as high speeding and recklessness. Traffic violations are not merely technical errors but rather serious negligence, reflecting a lack of legal awareness and social responsibility among drivers on the road. Normatively, traffic crimes are regulated by Law Number 22 of 2009 concerning Road Traffic and Transportation. However, although this regulation stipulates criminal sanctions for perpetrators of accidents due to negligence, their implementation in practice often does not align with the principles of justice and legal certainty. Many fatal accidents result in light sanctions or even amicable settlements without proportionate criminal accountability. This creates a public perception that traffic law enforcement is still weak and has not provided a deterrent effect. From a positive criminal law perspective, sanctions for traffic recklessness are clearly regulated. However, when viewed from the perspective of the public and victims' sense of justice, several important points are as follows:

- a. Relatively light penalties. Many members of the public and victims' families believe the maximum penalty of six years in prison or a fine of only Rp 12 million is too lenient when compared to the loss of life. As a result, the law appears to have little deterrent effect.
- b. Disproportionate to the Victim's Losses. Traffic accidents often result in material losses (hospital costs, loss of income, etc.) and immaterial losses (trauma, loss of family members). However, compensation for victims is often not guaranteed in criminal decisions, except through civil lawsuits or insurance.
- c. Restorative Aspects Are Not Optimal: Traffic law still emphasizes criminal sanctions, rather than solutions that restore victims.
- d. Restorative justice has begun to be used in certain cases (e.g., minor accidents), but for cases resulting in death, it often still focuses solely on punishment.
- e. Justice bias from both the victim and the perpetrator. From the victim/family's perspective, a sense of justice often demands a harsh sentence to acknowledge their suffering. From the perpetrator's perspective, sometimes accidents occur without malice, so excessively harsh punishment is considered unfair. Therefore, balancing the two remains a challenge.

Indonesia's traffic law policy still harbors several fundamental weaknesses, particularly in handling crimes caused by recklessness. This phenomenon reflects a gap in the legal system, which is unable to clearly distinguish between ordinary negligence and acts classified as gross recklessness. As a result, many potentially fatal violations are treated simply as minor negligence, without considering the level of risk and impact. This demonstrates that existing legal instruments are not yet fully effective in providing fair and proportional legal protection for all parties.

Recklessness on the road is a major cause of traffic accidents in Indonesia. Actions such as driving without regard for the safety of other road users, illegal racing, using mobile phones while driving, and violating traffic signs often result in significant losses, both material and human lives. This phenomenon demonstrates that some members of the public still have low legal awareness, while law enforcement officials also lack firm standards for assessing the level of culpability and danger of such reckless behavior. However, law enforcement against traffic crimes resulting from recklessness does not fully reflect the public's sense of justice. Many cases end with light sentences or even amicable settlements disproportionate to the suffering of the victims and their families. The disparity between the consequences and the sanctions imposed creates the perception that the law still favors the perpetrators, not the victims. This situation ultimately erodes public trust in the legal system and fosters a sense of social injustice.

First, the weak definition and enforcement of the element of recklessness. One of the fundamental problems in Indonesian traffic law policy lies in the unclear legal definition of recklessness. Law Number 22 of 2009 concerning Road Traffic and Transportation does regulate criminal acts resulting from negligence, but it does not provide a clear demarcation between ordinary negligence and gross recklessness. This lack of a detailed definition creates problems in law enforcement practice, as law enforcement officers often have difficulty assessing the extent to which a person's behavior can be categorized as recklessness, which deserves a more severe punishment. The phrase "due to negligence" in traffic law articles is often interpreted generally and narrowly, without considering the context and level of danger of the perpetrator's actions. In many cases, actions such as driving at high speed in busy areas, running red lights, or driving under the influence of alcohol are often considered merely ordinary negligence, even though they clearly demonstrate the perpetrator's awareness of the risks that could endanger the lives of others. This indicates a normative vacuum that causes law enforcement to lack firmness and moral direction in imposing proportionate sanctions. Due to the weak definition and enforcement of the recklessness element, many traffic offenders are charged only with ordinary negligence, even though their actions result in significant harm, even loss of life. These lenient sentences create the impression that the law has no deterrent effect and is biased against victims.

In the long term, this situation has the potential to undermine public trust in the criminal justice system, as people perceive the law as not yet a full instrument of justice, but rather merely a formal procedure that fails to address substantive justice. The implication of weak enforcement of the element of recklessness in traffic criminal law is the emergence of negative public perceptions of the justice system. Many people believe that the punishments imposed on perpetrators are disproportionate to the impact, particularly in cases that result in death or serious injury. This imbalance between the act and the sanctions imposed makes people feel that the law no longer functions as a tool of justice, but rather as a formality lacking empathy for the victim's suffering. This situation reinforces the perception of social injustice, as people see a gap between expectations for substantive justice and the reality of the legal process. When perpetrators of reckless acts are only given light sentences, while the victims and their families endure a lifetime of suffering, the perception arises that the law favors the perpetrators rather than protecting the victims. This weakens public trust in law enforcement institutions, including the police, prosecutors, and courts. Furthermore, this perception of injustice also impacts the moral legitimacy of the criminal justice system in the public eye. When the law is unable to provide a sense of proportional justice, society can lose respect for legal norms themselves.

Second, a crucial issue in traffic law enforcement in Indonesia is the disparity in court decisions due to the lack of clear guidelines regarding the level of recklessness and proportional sanctions. Law Number 22 of 2009 does not provide detailed guidance for judges in assessing the severity of recklessness that causes an accident. As a result, each judge has extensive room for interpretation in determining the type and severity of punishment. In practice, cases with similar violation patterns often result in significantly different decisions, depending on the judge's subjective assessment of the elements of culpability and the resulting consequences. This inconsistency creates disparity in decisions that impact legal uncertainty. The public is often confused and disappointed when perpetrators who cause fatalities are only given probation or light fines, while in other comparable cases, the perpetrators receive heavier prison sentences. This uncertainty erodes the principle of equality before the law, which states that everyone should be treated equally before the law.

Third, the Indonesian traffic criminal law system is still dominated by a retributive approach, emphasizing retribution against perpetrators. This approach views justice as punishment for wrongdoing, without considering the recovery of victims and the resulting social impact. In the context of criminal acts resulting from recklessness on the road, a legal orientation that solely emphasizes retribution often fails to deliver complete justice. Victims and their families become mere objects in the legal process, without adequate opportunity for moral justice or psychological recovery.

Fourth, weak policies governing and enforcing the law on reckless driving have a direct impact on people's sense of safety in public spaces. When fatal traffic violations are not met with firm law enforcement, people feel that their road safety is inadequately protected. This situation demonstrates the weak role of the state in guaranteeing citizens' basic rights to security and safety. As a result, people become wary, anxious, and even fearful when driving on public roads, as the threat of danger from other drivers' behavior is not balanced by law enforcement that provides a deterrent effect. Furthermore, social trust in legal institutions and the state also declines. When

people see perpetrators of reckless driving that result in fatalities receive only light sanctions, the perception arises that the law lacks the moral force to uphold justice. This gives rise to the perception that law enforcement in Indonesia is discriminatory and inconsistent.

Fifth, one of the fundamental problems in Indonesia's traffic criminal law system is the imbalance between procedural and substantive justice. Procedurally, law enforcement officers may have carried out their duties in accordance with applicable regulations, from investigation and prosecution to trial. However, adherence to procedures alone does not always guarantee the achievement of true justice. In many cases of reckless traffic crimes, the final outcome of the legal process often does not reflect the sense of social justice expected by society. The law seems to stop at the formal aspect, ignoring the suffering of the victim and the moral and social impact of the perpetrator's actions.

4. Conclusion

The criminal law policy on traffic offenses caused by recklessness has yet to embody substantive justice, as it remains oriented toward procedural legality, fails to clearly distinguish between ordinary negligence and recklessness involving conscious high-risk behavior, and often results in sanctions that are disproportionate to the level of culpability and social harm. Normative, structural, and cultural weaknesses, including the absence of explicit regulation of mens rea, the predominance of retributive approaches among law enforcement, and the low level of public legal awareness, demonstrate that the legal system has not fulfilled the ideals of justice as fairness as conceived by Rawls. Therefore, reconstructing the criminal law policy requires simultaneous reforms through clarifying the elements of fault and differentiating degrees of recklessness, adopting more proportional sanctions grounded in restorative justice, and strengthening legal culture through education and traffic ethics campaigns so that the law functions not only to punish but also to educate and prevent.

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