

Criminal Responsibility in Train Accidents at Level Crossings in Indonesia



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ABSTRACT: The accident involving the 112 Brantas train bound for Pasar Senen-Blitar with a tronton truck on Jalan Madukoro, Semarang City, Central Java, left grief. Police officials have not been able to confirm who is guilty and can be held criminally responsible for the accident. This study aims to determine criminal responsibility in a train accident at a level crossing, the research method used is normative legal research which is prescriptive by examining library based materials and secondary legal materials in the form of legal rules, legal principles, and legal doctrines to produce arguments, theories or new concepts as prescriptions in resolving the problems at hand. The results of the study show that, First, those who can be held criminally liable for the accident are legal subjects who intentionally or negligently interfere with train travel and are responsible for opening the road at level crossings. Engineers and crossing gatekeepers cannot be held criminally liable because the task of the Train Engineer and Crossing Gate Keeper is to ensure that trains can run on the rails in accordance with the allotment of railroads as stipulated in the railway law.

KEYWORDS: Criminal Responsibility, Railway, Traffic, Level Crossings.

I. INTRODUCTION

The accident involving the 112 Brantas train on the Pasar Senen-Blitar line with a tronton truck on Jalan Madukoro, Semarang City, Central Java, left a puzzle. Until now, police officers have not been able to determine what caused the tronton truck that was going to the Old City of Semarang to stop in the middle of the railroad tracks. In that incident, 626 passengers made it safely to their destination. There was only one passenger who was injured and was hospitalized because he jumped from the train during the incident. The driver and driver of the tronton truck with police number B 9943 IG are currently undergoing examination. Here are some facts about the 112 Brantas Train accident with a tronton truck on Jalan Madukoro Semarang. Based on local police information, the accident started when the truck suddenly broke down on the Jalan Madukoro Semarang train line. The truck broke down when the railroad tracks had not been closed. The truck driver and kernet tried to get help from the doorstep officer. Apart from the cause of the accident, police officers are still investigating the cause of the fire. Driver Violates Rules, Driver Will Be Asked for Information He suspects that the cause of the fire was suspected because the front of the truck was filled with fuel oil.

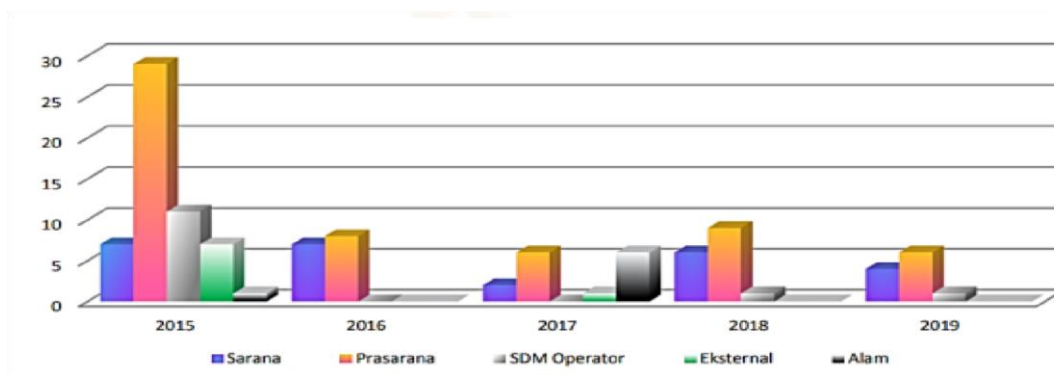
KAI Daop 4 Semarang Public Relations Manager, Ixfan Hendri Wintoko said, the Brantas train carried 626 passengers with a series consisting of 3 executive class trains, 6 economy class trains, and 1 generator train. As a result of the collision, there were 9 passenger train trips that experienced delays. From the perspective of criminal law, someone should be responsible for the accident. Which person can be held criminally responsible for the accident. From a criminal perspective, the transportation system can be said to be one of the basic needs of society which continues to experience improvement both in terms of quality and quantity. Among the various existing transportation systems, such as sea, air and land transportation, it turns out that land transportation is quite dominant. Especially trains. Recognizing the important role of transportation, especially land transportation in our country, it is necessary to regulate how to ensure safe, orderly, smooth and efficient traffic in order to ensure the smooth running of various activities towards realizing people's welfare.

Increasing the frequency of road users, especially motorized vehicles for various personal or public needs, can indirectly increase the frequency of traffic accidents. The rapid development of transportation technology has increased traffic accidents. On the one hand, it causes the range and cruising range of transportation to become wider, on the other hand it has become a very serious cause of death in the last few decades (Agio V. Sangki, 2012: 33-34).

Criminal Responsibility in Train Accidents at Level Crossings in Indonesia

Trains have a better reputation with passengers than other land transportation, but they also often cause accidents. According to the Directorate General of Railways, the proportion of causes of train accidents is 41% for infrastructure and 33% for human error, and of these three factors, human error is the most obvious cause because it can actually prevent accidents. Such as the following data.

(Month)



Based on the graph, it can be seen that the cause of the accident was the factor of facilities, infrastructure, operator human resources, external and nature. One of the factors causing fatal accidents is negligent HR operators. In this case, it is the railroad gatekeeper. From a legal perspective, this data is not entirely correct. Because criminal responsibility because someone is negligent, of course, must be based on applicable law.

Railway governance has its own arrangements compared to other transportation. including arrangements in the event of an accident at level crossings. Since time immemorial, Kerta Api has had its own law, even discussed exclusively in a separate material session. Kerta api has its own way, it is different from other vehicles. And has priority in traffic governance. An example is the Railway Line having the number one (most important) priority lane in the vehicle traffic structure, if there is a level crossing. After the train, then Fire, Fire, Ambulance and so on. Therefore, this article wants to explain how criminal responsibility is in a train accident at a level crossing.

II. RESEARCH METHODS

Research Methods The method used in this research is normative legal research which is prescriptive in nature by examining library-based and secondary legal materials in the form of legal rules, legal principles, and legal doctrines to produce arguments, theories or new concepts as prescriptions in solving the problems at hand. The approach used in this research is the statutory approach and the case approach. Types and sources of legal materials are primary legal materials and secondary legal materials. The primary legal material is in the form of the Criminal Code (KUHP), Law Number 22 of 2009 concerning Road Traffic and Transportation. Secondary legal materials were obtained from books, papers, journals, articles and the internet which have correlations to support this research. The legal material collection technique used is library research. In the literature study, the researcher conducted an inventory of primary legal materials and secondary legal materials that are still relevant to the legal issues under study. Legal materials are then analyzed using synthesis analysis.

III. C. RESULTS AND DISCUSSION

1. Criminal Responsibility Based on Law Number 23 of 2007 concerning Railways

Railway crossing means the left and right side of the railroad. The right and left sides of the railroad are included in the useful space of the railroad. This can be seen in Article 37 paragraph (1) of Law no. 23 of 2007 concerning Railways (Railway Law): "The useful space for the railroad as referred to in Article 36 letter a consists of the rail road and plots of land on the left and right of the rail road along with the spaces on the left, right, top and bottom which are used for the construction of the railroad and the placement of train operating facilities and other auxiliary buildings."

According to Article 181 paragraph (1) of the Railway Law, everyone is prohibited from a). being in the benefits room of the railway line; b). dragging, moving, placing, or moving goods on rails or across railroad tracks; or and c). using the railroad for other purposes, other than for rail transportation. Violation of Article 181 paragraph (1) of the Railway Law which can disrupt train travel, can be punished with imprisonment for a maximum of 3 (three) months or a fine of up to Rp. 15,000,000.00 (fifteen million rupiahs), as stated in Article 199 of the Railway Law: "Everyone who is in the utility room of the railroad, drags goods on or across the railroad without rights, and uses the railroad for other purposes other than rail transportation which can disrupt train travel

Criminal Responsibility in Train Accidents at Level Crossings in Indonesia

fire as referred to in Article 181 paragraph (1), shall be punished with imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiahs)."

This means that if someone walks on a railroad crossing, which is not allowed under the Railway Law, then that person himself has actually made a mistake. It may seem at first glance that the machinist can be charged with a crime under Article 359 or Article 360 of the Criminal Code ("KUHP"), however, it is necessary to look again at the elements of these articles: Article 359: "Anyone who because of his mistake (negligence) causes another person to die, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year." And Article 360: (1). Any person who through his fault (negligence) causes another person to be seriously injured, shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year. And (2) Any person who because of his mistake (negligence) causes another person to be injured in such a way as to cause illness or prevents him from carrying out his job or search for a certain time, shall be punished by a maximum imprisonment of nine months or a maximum light imprisonment of six months or a maximum fine of four thousand five hundred rupiahs.

According to R. Soesilo in his book entitled *The Book of Criminal Law (KUHP) and its Complete Commentary Article by Article*, what is meant by "because of his fault" is carelessness, neglect to forget, very lack of attention. In this case, the pedestrian himself has violated the rules, and if at that time the driver has also sounded the horn to warn the pedestrian, then the driver cannot be blamed.

If there is no element of error on the part of the driver, the train driver cannot be prosecuted. Regarding insurance, basically the operator of railway facilities is required to insure: a. responsibility towards service users; b. railway facility crews and people employed by railway facility operators on trains; c. railway facilities; and D. losses suffered by third parties.

2. Criminal Responsibility Based on Criminal Law Principles

Criminal liability must clearly prioritize in advance who can be held accountable. This shows that careful attention must first be paid to who is declared to be the maker or perpetrator of a criminal act. Criminal liability can only occur if someone has previously committed a crime. Even though a person has committed an act and fulfills a criminal element, it does not mean that the person has committed a criminal act. Because an element of error is still needed which is accountability for a person to be convicted: a). the ability to be responsible. b). there is an attitude of negligence in his actions. c). there is conviction for his actions. d). no excuses

The elements of the crime itself that must be reviewed are: (a) unlawful behavior. (b). made by mistake. (c). and deserves to be punished. According to Roeslan Saleh who agrees with Moelijatno that accountability is a mistake, with elements of error including: (a). can be responsible. (b). purposefully purposed. (c). there is no reason sorry in it. If these elements are missing, the person concerned can be prosecuted under the law. In addition, it must be remembered that there is an error in the broadest sense of the criminal responsibility concerned must first determine that his actions violated the law.

The ability to be responsible is one of the prerequisites for being responsible for a crime. A person can be said to be able to take responsibility when his soul is healthy, which fulfills two conditions, namely: (a). he may know or be aware that his behavior is against the law. (b). he can do his own will in accordance with his own awareness. A railroad gate guard officer can be punished if he neglects to maintain the safety of train passengers because he is not disciplined in his duties so that it can endanger the safety of train passengers and other road users. Criminal liability for railway gatekeepers can be imposed if their actions and mistakes are proven.

In the event of a train accident caused by the negligence of a train door guard, PT KAI cannot be prosecuted. Because every time the train is about to arrive the PPK (Train Travel Leader) always gives information to the train gatekeeper, either by telephone or by bell, so there are no negligent words to the train door guard. However, if the media for conveying the information is damaged or not functioning properly, the train gatekeeper must immediately report the situation to the station/PPKA so that PPKA can immediately send a follow-up report to the SSK/SDK office, pay attention to the train schedule at the guard post, warn to close the railroad crossing doors, and monitor the arrival of trains passing through the intersection.

Everyone needs facilities or tools that can support all their fast-paced and very dynamic activities. We often refer to this facility as transportation. Because it has been explained that transportation facilities are intended for people or people with high mobility, the development of transportation means technology must follow the interests of the community. Currently there are many modes of transportation that can be used by the community to assist their activities. Basically, almost all countries in the world have regulated traffic and transportation problems, including Indonesia. In which the railway as a national project and the national transportation system has been regulated in Law Number 23 of the year concerning railways. In it there is article 2 which explains that the train as a public vehicle is an integrated part of the national transportation system which is carried out based on several principles, namely the principles of benefit, justice, balance, public primacy, integration, independence, transparency, accountability and the principle of sustainability.

Criminal Responsibility in Train Accidents at Level Crossings in Indonesia

Railways are a mode of public transportation that are owned and become the authority of the state through SOEs so that the state can carry out guidance through its powers, which include planning, regulation, development, empowerment and supervision. Furthermore, in the rail system there is a section that performs the function of maintaining traffic which is referred to as the railroad gate. For this function, not all parties can carry out this role, which can be done by those who are called track keepers. Track keepers themselves can be understood as those who have been trained and have special expertise to protect and operate train doors which must be formalized by possessing proof of a certificate from the government.

Furthermore, regarding criminal responsibility, it can only arise if there are parties who have committed acts that are considered as criminal acts. In this case, it should be emphasized that considering an act as a crime is not a simple matter, because if an action has been agreed upon, it fulfills the elements of a crime, it is not simply considered that way. This is because there is still another element, namely the element of error which must also be fulfilled by an act of the perpetrator. In this case, the element of guilt must fulfill four conditions: the element of perpetrator's responsibility. The element of attitude towards one's actions consists of intention and guilt. The element of awareness of the perpetrator's behavior. And that element should not be forgiven. Currently there are also four criminal factors that must be met first in a crime, one of which is the existence of the crime. This action is said to be against the rules. The element of the act is a criminal act. And this action deserves to be punished.

According to Moeliatno, accountability can be understood as a mistake and includes elements that allow the perpetrator to be held accountable for his actions. This act was intentional and involved negligence. No reason. Based on this, if a convict does not have the factors mentioned above, then the perpetrator can be considered criminally responsible. Instead of that, it must be remembered that there is an error in the broadest sense (criminal liability) of the person concerned must first be stated that his actions are against the law. If the act is not against the law, then there is no need to determine guilt, meaning that the act itself cannot be reproached. Based on the review above, the ability to be responsible is one of the conditions for criminal responsibility.

A person is said to be capable of being responsible if his soul is healthy, that is, if he fulfills two conditions, namely being able to know or be aware that his actions are against the law, and being able to determine his own will in accordance with that awareness. It is stated in book I Chapter III Article 44 of the Criminal Code which reads: "anyone who commits an act for which he cannot be held accountable, because his soul is disabled in his body or his soul is disturbed due to illness, will not be punished." So if Article 44 is examined, two things can be seen, namely the first regarding the determination of the maker's soul condition.

Testimony of the maker's personal condition in the form of a state of mind or soul that is stunted or disturbed by a disease, which is carried out by a psychiatrist (psychiatrist). The psychiatrist investigated how the maker's soul was at the time the deed was committed. The second is the determination of the causal relationship between the mental state of the creator and his actions. Meanwhile, the party responsible for deciding that there is a causal relationship between the psychological condition of the perpetrator and the actions of the perpetrator is the judge in court. In this case, only the judge has the right to decide whether the perpetrator can be held responsible for his actions.

Furthermore, criminal responsibility to the railroad track keeper can be determined if there is at least 2 corroborating evidence, including the actions and mistakes of the track keeper himself. In this case the actions of the railroad crossing guard can be held criminally responsible if a number of things are met, including if the actions of the railroad crossing guard are determined to have violated the rules regarding the assignment procedure from PT. KAI.

The first procedure is that the track keeper is absolutely not allowed to open or raise the latch for a train that has passed through the latch on orders or requests from any party, unless the guard is forced to open it because there is a direct supervisor who is willing to take responsibility. The second procedure is that the track keeper is not allowed to leave his place or office or entrust the place for keeping track of the railroad to any party if he does not have permission from his immediate supervisor. The third procedure is if, in the event of a traffic jam, the track keeper tries to stop the train by placing the slogan 3 at a distance of 500 m from the crossing. This is because if it continues to be carried out then there will be losses received by other traffic users which can be in the form of fatalities and injuries. If there is a violation of the Criminal Code in Article 359 regarding the causes of casualties and injuries caused by intentional or unintentional negligence which states that anyone who due to mistake and negligence causes another person to die will be punished with 1-5 years in prison. Which needs to be emphasized that the criminal law calls negligence, error, carelessness, and negligence as culpa.

If there is a violation of the rules in the Criminal Code in article 360 which is caused by negligence which causes the other party to suffer serious injury stated in paragraph 1 reads that a person who causes serious harm to another person due to the negligence of the perpetrator can be punished with imprisonment of 1-5 years. Meanwhile, if the detrimental action is caused by an error, it can be corroborated by at least two pieces of evidence, namely first, the track keeper is psychologically healthy and understands all the actions he is taking, and second, that the track keeper's mistake was intentional or unintentional. So that if these two things can be proven then the track guard can be held criminally responsible. However, as mentioned above, criminal responsibility cannot be requested if the track guard is ordered by a superior so that the responsibility is transferred to the superior.

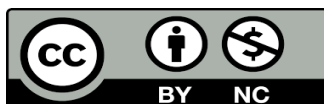
Criminal Responsibility in Train Accidents at Level Crossings in Indonesia

IV. CONCLUSION

The results of the study show that first, those who can be held criminally responsible for the accident are legal subjects who intentionally or negligently interfere with train travel and are responsible for opening the road at level crossings. In this case the legal subject can be held accountable as stipulated in Article 181 paragraph (1) of the Railway Law, every person is prohibited a). being in the benefits room of the railway line; b). dragging, moving, placing, or moving goods on rails or across railroad tracks; or and c). using the railroad for other purposes, other than for rail transportation. Meanwhile, the engineer and the crossing guard cannot be held criminally responsible for an accident involving the 112 Brantas train on the Pasar Senen-Blitar route with a tronton truck on Jalan Madukoro, Semarang City, Central Java. Police officers must be able to ensnare legal subjects who are guilty by law who can be held criminally responsible in the accident.

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