



Legal Protection of Drivers in Train Accidents at Crossings Without Door Bars

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Article Info	Abstract
Article History Revised : 2023-10-21 Accepted : 2023-11-29 Published : 2023-12-01	Legal protection for machinists in train accidents at crossings without door bars in the area of PT. Kereta Api Indonesia Persero Divre West Sumatra is based on Article 124 of Law Number 23 of 2007 concerning railways. PT KAI provides protection to machinists by being responsible if third parties can prove from the chronological results of investigations and investigations if it is proven that the machinist really made a mistake that resulted in an accident and caused casualties. Form its legal liability by insuring losses suffered by third parties. In train accidents at crossings without door bars, machinists are not given responsibility alone but are protected by the company. The legal responsibility of PT Kereta Api Indonesia Persero Divre West Sumatra to victims of train accidents at crossings without door bars is that the security and safety of public road users is not the responsibility of the transportation organizing body, in this case PT. (Persero) Indonesian Railways . The crossing gate bars are not for the security of public road users, but to secure and facilitate train travel alone. Criminal liability by the machinist for train accidents must be seen from the element of guilt and also see the responsible ability of a machinist, if all elements have been fulfilled then the machinist can be held responsible for train accidents. When crossing a crossing, it also bears the risk that if the crossbar is not provided as an adequate facility in limiting road users from passing and allowing the train to pass first.

Keywords:

Legal Protection;
Machinist; Train;
Accidents

INTRODUCTION

Train (KA) in Indonesia is a mode of land transportation in the form of vehicles driven by diesel engine propulsion, either running alone or coupled with other railway facilities, which will or are moving on rail roads related to train travel.¹ Trains can only run on tracks as their tracks. This means of rail transportation has the advantage of having its own track and not being disturbed by other land traffic. But on the one hand, trains have limitations, one of which is the supporting facilities on Indonesian railways such as there are still many railway crossings that do not have bars. At the intersection of a plot between a railway line and a road which is then called "Plot Crossing" where this plot crossing can be grouped into:²

1. Crossing of a plot with a door
2. Unguarded plot crossing.

Railway crossings are the left and right sections of the rail road. The right and left

¹ Modes of Transportation/Modes of Rail Transportation-Wikibooks Indonesian (wikibooks.org) retrieved June 23, 2022

² Utomo, *Jalan Rail*, Beta Offset, Yogyakarta, 2009, p 138

sections of the railway road are included in the benefit space of the railway line.

This plot crossing is still a factor causing the high rate of traffic accidents between vehicles and trains, this occurs due to the negligence of motorists and also the lack of supporting facilities at the plot crossing. With the development of land transportation modes in Indonesia, it will certainly cause problems. The most frequent problem is the problem of traffic accident cases caused between trains and motorized vehicles that often occur at railway crossings. This problem can be caused by human factors, road factors, vehicle factors and environmental factors. In Article 124 of Law Number 23 of 2007 concerning Railways which reads: "At the intersection of a plot between a railway line and a road, road users must give priority to train travel." So road users must put the passing of trains first. In fact, there are still crossings that do not have bars which result in greater occurrence of train accidents at railway crossings and many other factors that cause a very high number of accidents at railway crossings.

Article 114 of Law Number 22 of 2009 concerning Road Traffic and Transport reads: At the crossing of a plot between a railway line and a road, the driver of the vehicle must:

- a. Stop when the signal has sounded, the train door bars have begun to close, and or other signals;
- b. Prioritizing the railway; And
- c. Giving primary rights to vehicles that cross the tracks first.

According to railway accident investigation data in Indonesia in 2011 there was 1 accident, in 2012 there were 3 accidents, in 2013 there were 2 accidents, in 2014 there were 6 accidents, in 2015 there were 7 accidents, and in 2016 there were 6 accidents. The high number of train accidents in Indonesia is a problem that has not been fully overcome by PT. Indonesian Railways. PT. Indonesian Railways must immediately fix all the problems that cause train accidents in Indonesia so that they do not recur.³

In the city of Padang, there are 425 railway crossings that are unguarded and not equipped with door bars. It is very prone to traffic accidents that claim people's lives. Cases of accidents involving trains and road users crossing are becoming more and more frequent. From the data received this topic from PT. KAI Divre II West Sumatra, from 2019 to November 2020, there were at least 45 accidents involving trains. Of the 45 accidents, 13 people died with the division of accidents in 2019 as many as 24 accidents with 8 people died and in 2020 as many as 21 accidents with 5 people died. Mostly, these accidents occur on crossings without door bars involving motorized vehicles, both two-wheeled and four-wheeled.⁴ The issue discussed was legal protection for machinists in train accidents at crossings without door bars in the PT. Kereta Api Indonesia Persero West Sumatra and the legal responsibility of PT Kereta Api Indonesia Persero West Sumatra for victims of train accidents at crossings without door bars.

METHODS

The specification of this study is *descriptive analytical*, with normative juridical approach methods supported by empirical juridical. The data used are secondary data and primary data. Secondary data are obtained from the study of documents, primary data are obtained by means of interviews. The data obtained are then analyzed qualitatively.

RESULTS AND DISCUSSION

Legal Protection of Drivers in Train Accidents at Crossings Without Door Bars

Cases of land traffic accidents involving trains, especially accidents at crossing doors,

³ Drafting Team, *PTDO Train Travel Chart*, PT. Kereta Api Indonesia, 2015, p 28

⁴ <http://topikini.com/ini-data-kecelakaan-kereta-api>, accessed on June 28, 2021

are often PT. (Persero) Kereta Api Indonesia, in this case, the driver is blamed for the accident that occurred. The number of registered crossings in Indonesia there are approximately 8,385 crossings with 1,145 maintained crossings and 7,240 unmaintained crossings, this number is spread across Java Island as many as 7,545 crossings, 943 maintained crossings 6,602 unguarded crossings and on the island of Sumatra there are 840 crossings with 202 maintained crossings and 638 unguarded crossings, that number is registered and there are still approximately 17,000 crossings that have not been registered.

This is a legal issue or legal problem regarding legal protection for machinists in train accidents at crossings without door bars, this legal settlement certainly cannot be separated from claims and / or lawsuits against the responsibility of the transportation organizing body, namely PT. (Persero) Kereta Api Indonesia, this problem arises because of confusion / or gaps between the juridical basis / or *das sollen* and the facts / or *das sein* that occur.

In one of the cases of accidents that occurred at the crossing gate, on October 26 at 14.26 WIB, there was an accident between Train B16 and a truck. The beginning of the incident when Train B16 drove through a crossing where there was no crossing bar, the train was escorted by Rusmaeyul as a machinist, also by assistant machinists circuit refiners (JLR) and track road officers (PJL) collided with a truck, truck drivers intended to go home as habit of working to transport sand and pass crossroads, where there were railway crossings without crossing bars, Truck drivers should be careful by paying attention to the surroundings, especially when truck drivers see officers who have signaled that there will be a train that will pass through the crossing.

The collision incident could not be avoided anymore because the truck driver ignored the signs and signs given by the officer, and as a result the truck hit the 9th (nine) and 8th (eight) cars of the locomotive, in this case the train carried 9 (nine) carriages and the locomotive was behind the carriage by pushing 9 (nine) carriages, because there was an accident and fire in the 9th (nine) and 8th (eighth) carriages, the rescue was carried out by road officers The track and the auctioneer tried to release the 7th (seven) car but were unsuccessful, and continued to release the 6th (six) car but did not succeed also finally the 5th (five) car could be released, the next process was carried out evacuation of the passenger passengers. The accident in the case did not cost lives but caused losses.

The form of legal protection for train drivers is contained in regulations that explain every road user who must stop and prioritize the passage of the train has been listed in:

1. Article 124 of Law Number 23 of 2007 concerning Railways which reads:
At the intersection of a plot between a railway line and a road, road users must give priority to train travel.
2. Article 78 of Government Regulation Number 56 of 2009 concerning Railway Operation which reads:
To protect the safety and smooth operation of trains at intersections, road users must give priority to train travel.
3. Article 110 paragraph (1) of Government Regulation Number 72 of 2009 concerning Railway Traffic and Transportation which reads:
At the intersection of a plot between a railway line and a road hereinafter referred to as the intersection of a plot used for general traffic or special traffic, road users must give priority to train travel.
4. Article 114 paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation which reads:
At the crossing of a plot between a railway line and a road, the driver of the vehicle must:
 - a. Stop when the signal has sounded, the train door bars have begun to close, and or other signals;
 - b. Prioritizing the railway; And

c. Giving primary rights to vehicles that cross the railroad tracks first

There are several legal protections provided to train drivers, namely first, the perpetrator is immediately secured at the nearest police post, this is important to do because to avoid unwanted events such as future tantrums both from family and from irresponsible people, it can be from the perpetrator's enemies although the percentage is small but it can happen. This is the initial protection provided by the police to perpetrators of criminal violations of Article 310 paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation.

The second legal protection given to machinists is to arrest the perpetrators. This detention is carried out to make it easier for officers to protect and get information from the perpetrators intensively, if the victim dies or is seriously injured, the police will immediately make arrests. If the victim suffers minor injuries, the police will give both parties to carry out a peaceful settlement on the spot, if there is no meeting point or agreement between the two parties in the settlement, the police will settle it at the police station legally.

According to the Legal Manager of PT. KAI Padang, argues that PT. KAI is responsible for accident cases that occur at railway crossings, so it must be seen first from the chronology of the accident as to what it is, if from the chronology at the scene of the accident on the results of investigations and investigations that if it is proven on the facts in the field if the driver is indeed negligent in carrying out his duties as a train driver and does not carry out proper procedures, then from PT. The Railway will compensate the victim.⁵

Based on the provisions of Article 159 paragraph (1) above, PT KAI can be responsible if a third party can prove the fault of railway employees from the chronological results of investigations and investigations if it is proven that the machinist really made a mistake that resulted in an accident and caused casualties, then PT. KAI can be responsible for the occurrence of traffic accident cases at railway crossings, and PT KAI is responsible, and forms its legal liability by insuring losses suffered by third parties as a result of the operation of railway facilities or infrastructure in accordance with Article 169 paragraph (3) of Law Number 23 of 2007 concerning Railways which reads:

The operation of railway facilities is obliged to insure losses suffered by third parties as a result of the operation of rail transportation.

The analysis carried out legal protection of machinists using the theory of legal protection. Legal protection can be divided into legal protection internally and externally. Internal legal protection is concretely carried out by the parties through an agreement that is agreed and then signed. External legal protection is legal protection provided by the framer of the law. Through a series of provisions of the articles formed, it has been arranged in such a way that the implementation of certain regulated fields can run as it should, without violating the rights of others. Even when there are rights that are violated, it is also regulated how the mechanism for restoring these rights is.

Legal protection is a universal concept of the State of law. Legal protection is provided if there are violations or actions that are contrary to the law committed by the government, both the actions of the ruler who violates the law and the community that must be considered. The definition in the word legal protection is an attempt to provide rights that are protected in accordance with the obligations that must be carried out. Legal protection can mean the protection provided so that the law does not become multi-interpretation so that then it is not injured by law enforcement officials. Legal protection can also mean protection provided by law for a certain thing or object. This theory of legal protection later became in harmony with legal protection for machinists who were in train accidents at crossings without door bars.

⁵ Interview with Legal Manager of PT KAI Padang on October 12, 2022

Legal Responsibility of PT Kereta Api Indonesia Persero Divre West Sumatra to victims of Train Accidents at Crossings Without Door Bars.

If we refer to one of the legal principles that reads "*lex specialis derogat legi generali*" meaning that the special law cancels the general law or can be described as a special legal norm defeating the general legal norm, then in the case of rail transportation the legal rules applied are Law Number 23 of 2007 concerning Railways and other supporting official rules, So that all matters related to railway transportation, both facilities, infrastructure, and losses incurred at least refer to the applicable official laws and regulations.

Railway officers by railway crossing guards and machinists carry out duties stipulated by special legal rules, namely the duty to secure railway tracks and secure railway roads at crossings from violations of public road users that can result in accidents by carrying death, injury or other damage, or congestion of road users who scramble to cross the road.

In the railway transportation service regulations, it is concluded that the security and safety of public road users is not the responsibility of the transportation organizing body, in this case PT. (Persero) Kereta Api Indonesia, the transportation organizing body, is responsible for security and safety lies only in transportation. On the other hand, what we often do not understand is that the crossing gate bars are not for the security of public road users, but to secure and facilitate train travel alone, the main supporting factor in improving the quality of PT. (Persero) Kereta Api Indonesia is a means and infrastructure of the work system starting from the organizational structure of PT. (Persero) Kereta Api Indonesia itself, as well as its facilities and infrastructure in terms of operations, according to the vision and mission of PT. (Persero) Kereta Api Indonesia is to be the best railway service provider that focuses on customers and meets *stakeholder* expectations, and organizes the railway business and its supporting business businesses, through best organizational business model business practices to provide high added value for *stakeholders* and environmental sustainability based on 4 (four) main pillars, namely safety, punctuality, service and comfort.

In land transportation, there is a principle of responsibility, namely first, *Based On Fault*, which is the principle of responsibility based on a fault, as stipulated in Article 1365 of the Civil Code or known as *Onrechtmatiggedaad* (unlawful acts). Second, *Presumption of Liability* (the presumption that the carrier is always liable), without any necessity for the injured party in proving that there is an unlawful act on the part of the carrier or not. This principle is based on a *contractual liability agreement*. Third, *Presumption Of Non Liability* (the presumption that the carrier is always irresponsible) as for example in passenger luggage that uses the services of a carrier where the goods are under the supervision of the passengers themselves. Fourth, *Absolute or Strict Liability*, *this principle as it has the meaning of false or not wrong, for which the carrier must be responsible in the absence of the burden of proof.*

In the first principle, which is ballast that the absence of infrastructure facilities in the form of door bars that result in accidents at crossings is a mistake, especially these mistakes are not responsible for losses suffered by accident victims. Then in determining the existence of unlawful acts, 3 (three) categories of unlawful acts, including: Unlawful acts due to intentionality, Unlawful acts without fault (without elements of intentionality or negligence), Unlawful acts due to negligence. The absence of door bars as a safety tool in a plot crossing is negligence even though it is not included in intentionality, due to human limitations in supervising, at least there is no negligence in releasing responsibility. Such negligence results in a violation of the law under 1365 of the Civil Code and based on Article 1366 of the Civil Code which confirms that everyone is responsible not only for losses due to his actions but losses caused by his negligence.

Criminal liability by the machinist for train accidents must be seen from the element of guilt and also see the responsible ability of a machinist, if all elements have been fulfilled then the machinist can be held responsible for train accidents. Due to the losses suffered by

the victims of this accident, it causes problems for the parties concerned, but in this case who is obliged to bear the risk, in the event of an accident at a plot crossing that falls on objects or affects a person's property, soul, and body. In general, insurance clauses are always included in business contracts. And often there are insurance costs that are included as part of the sales price of goods or services. So that when crossing a crossing, even a plot bears the risk that if the crossbar is not provided as an adequate facility in limiting road users to pass and let the train pass first.

It is necessary to understand the understanding of risk itself, risk in various insurance law literature, there are several expert opinions that describe the concept of risk, including:

First, according to R. Subekti and R. Tjitrosudibio stated "that risk in Dutch is called *risico* and in English is called *risk*, which has the obligation to bear losses due to an event beyond its fault, which befalls the goods that are the object".⁶

Second, according to Soeisno Djojosedarso stated that risk has several characteristics that are divided, including: Unintentional risk (pure risk), which if the event occurs by causing losses but occurs unintentionally. Deliberate risk (speculative risk), a deliberate risk due to the person concerned, in order for uncertainty to occur that benefits him. Fundamental risk, that is, the risk whose cause cannot be passed on to a person and who suffers not only one or several people, but many people. Dynamic risk dam, which is a risk that arises due to the development and progress of society in the fields of technology, economics, and science.⁷

Then third, according to H. Gunanto also stated about risks which according to him are divided into 2 (two) types of risks, namely: Pure risk, risk or deviation that only causes the possibility of loss; and Speculative risks, risks or deviations that occur can be beneficial or can be detrimental.⁸

From what was stated by several opinions by several experts in the field of insurance above, that there are several types of risks that can befall anyone in an event, both someone personally and business actors in a business. Efforts are made by someone in overcoming risks that may occur and everyone has their own actions in overcoming risks.

In general, risks can be faced but not managed by themselves but transferred to other parties, in this case to insurance institutions. As the choice of transferring risk to insurance, as the function of insurance is to be a protection institution or provide protection for insurance objects, other things are also as protection institutions or provide protection for insurance objects, but also as a means of investment, especially in a number of money.⁹

As for expert opinions that argue about the definition of insurance other than laws and regulations, including according to Wirjono Prodjodikoro defines "insurance as an agreement when the party who guarantees the agreement to the guaranteed party, to receive a sum of premium money as a form of compensation that will be suffered by the guaranteed party, due to the consequences of an event that has not occurred".¹⁰

There is another opinion about the definition of insurance according to Tuti Rastuti, "insurance is a form of risk management or risk control, by transferring risk (*transfer* of risk) or dividing risk (*distribution of risk*) from parties who have the possibility of suffering due to risk to other parties (insurance companies), who are willing to protect from possible risky events to the first party".¹¹

⁶ R. Subekti and R. Tjitrosudibio, *Legal Dictionary*, Pradnya Paramita, Jakarta, 1970, p. 89

⁷ Soeisno Djojosedarso, *Principles of Insurance Risk Management*, Salemba Empat, Jakarta, 2003

⁸ H. Gunanto, *Academic Paper of Laws and Regulations on Insurance Agreements*, National Legal Development Agency, Jakarta, 1995, p. 19

⁹ Sentosa Sembiring, *Insurance Law*, Nuansa Aulia, Bandung, 2014, pp. 4-5

¹⁰ Tuti Rastuti, *Legal Aspects of Insurance Agreements*, Pustaka Yustisia, Yogyakarta, 2011, p. 12

¹¹ *Ibid*, p. 5

In answering the formulation of legal responsibility of PT Kereta Api Indonesia Persero Divre West Sumatra for victims of train accidents at crossings without door bars, the author uses the theory of responsibility. According to Abdulkadir Muhammad, the theory of responsibility in tort *liability* is divided into several theories, namely:

1. Liability due to unlawful acts committed intentionally (*international tort liability*), where the defendant must have committed an adverse act to the detriment of the plaintiff or know that what the defendant did would result in loss.
2. Responsibility due to unlawful acts committed due to *negligence* (*negligence tort liability*), which is based on the *concept of fault* related to morals and laws that have been intermingled.
3. Absolute liability for unlawful acts without question of fault (*strict liability*), "based on his actions intentionally or unintentionally, which means even if not his fault is still responsible for losses arising from his actions.

In connection with this, it can be stated that there is a paradigm of the existence of an obligation either before or after the occurrence of an indefinite event (accident), then for legal responsibility, which can actually be divided into 2 (two) things, namely responsibility before the occurrence of an event and responsibility after the occurrence of an event.

CONCLUSION

Increasing Human Resources (HR) in the working area of Railway Employees, and there must be counseling on Law Number 23 of 2007, Government Regulation Number 79 of 2009 and Law Number 22 of 2009, to the general public so that all people understand the rules in the law. And advice for the community, people must be more careful when going through the railway crossing, it would be nice to look right and left first before crossing and obey the regulations, if the crossing door is closed, don't try to break through the crossing door because there are criminal sanctions in article 296 of Law Number 22 of 2009. Relating to the Criminal liability of PT. KAI in a train accident with a rider, although PT. KAI cannot be held criminally responsible, for PT. KAI in order to improve the human resources of machinists so that they can be more careful in carrying out their duties.

REFERENCES

- Abdul Kadir Muhammad, *Land, Sea and Air Transport Law*, Citra Aditya Bakti, Bandung, 2001
- Drafting Team, PTDO Train Travel Chart, PT. Kereta Api Indonesia, 2015.
- H. Gunanto, *Academic Paper of Laws and Regulations on Insurance Agreements*, National Legal Development Agency, Jakarta, 1995
- <http://topikini.com/ini-data-kecelakaan-kereta-api>.
- Muhammad Ngafifi, Technological Progress and Human Life Patterns in a Socio-Cultural Perspective, *Journal of Educational Development: Foundations and Applications*, Volume 2, Nmor 1, 2014
- Modes of Transportation/Modes of Rail Transportation-Wikibook Indonesian (wikibooks.org)
- Muchtarudin Siregar, *Some Economic Problems and Transport Mangement*, UI, Jakarta, 1987
- Utomo, *Rail Road*, Beta Offset, Yogyakarta, 2009
- R. Subekti and R. Tjitrosudibio, *Legal Dictionary*, Pradnya Paramita, Jakarta, 1970
- Soeisno Djojosoedarso, *Principles of Insurance Risk Management*, Salemba Empat, Jakarta, 2003
- Sentosa Sembiring, *Insurance Law*, Nuansa Aulia, Bandung, 2014
- Tuti Rastuti, *Legal Aspects of Insurance Agreements*, Pustaka Yustisia, Yogyakarta, 2011