



## CRIMINAL LIABILITY OF ONLINE TRANSPORTATION FOR TRAFFIC ACCIDENT VICTIMS ON POSITIVE LAW AND ISLAMIC LAW PERSPECTIVE

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**Abstract:** This article aims to find out about the problem of traffic accidents that often occur and is also related to online transportation companies and their online motorcycle taxi driver partners. This research uses normative research methods with a positive law and Islamic law approach. The results of this research show that the responsibility of online motorcycle taxi drivers is viewed from a positive legal aspect, namely replacing material that has been made a loss by a public transportation company. The loss to be replaced must be based on an agreement between the parties if the matter is outside of court. public transportation is based on a decision that is made in court. Meanwhile, according to Islamic law, a person can be held responsible if the person is a person who has a good mind and is an adult. Accidents that cause death are included in culpable homicide so that the solution that can be taken is that there is no qishas penalty for culpable homicide, but there are only two legal sanctions, namely the main punishment in the form of *diyat* and *kafarat*.

**Keywords:** Criminal Liability; Online Transportation; Positive Law; Islamic law.

### 1. INTRODUCTION

The problem of criminal liability for technology companies arises because corporations as the subject of criminal acts have been placed in many laws to be held accountable, but there are still very limited cases with the subject of corporate law. Online motorcycle taxi drivers who cause accidents will be taken to court to complete the law enforcement process, not the company who will be taken to court.(Ali, 2011)

Previous research revealed that criminal liability for online transportation according to article 315 paragraph 1 UULAJ is held accountable and imposed on public transportation companies. This is related to positive law. Meanwhile, from an Islamic law perspective, online transportation companies can be held accountable by providing compensation. The Indonesian Consumer Protection Institute (LPKNI) has made an observation with the result that consumers will be given legal protection. However, providing protection must first look at the party who committed the negligence, whether from the consumer's side or the driver's side. If consumers experience losses due to errors made by motorbike taxi drivers due to an accident, this will also be discussed in consumer protection legislation. This is done to protect consumers by exercising their rights as consumers and so that arbitrary behavior does not occur by perpetrators who have caused accidents.

### 2. ANALYSIS OF STUDY FINDINGS

#### 2.1 Definition of Criminal Liability

Criminal responsibility is a term taken from a foreign language, namely *theorekenbaardheid* or criminal responsibility. The definition or meaning of this language falls into the realm of criminalization of an act which is intended to determine a person for what will be held responsible, whether he did it or not and whether it has happened or not.(Schultz & Vile, 2019)Criminal liability in Islamic law is defined as a burden imposed on a person because he has committed an act where he knows the consequences and he carries out the act not from coercion from another person but from his own will.(Usammah, 2008), both formally and materially.(Annisa Winatasia, Siti Hajati Hoesin, 2014)

#### 2.2 Understanding online motorcycle taxis and their purposes



In Article 1 number 20 of the Road Traffic and Transport Law states that a motorbike taxi is "a bicycle or motorbike that is rented by the rider". (RI Law NUMBER 22 OF 2009 CONCERNING ROAD TRAFFIC AND TRANSPORT, 2009) The aim is to process passenger orders faster than usual because they are connected or connected to the internet and can transport people or goods more easily because they can pass routes that are difficult for other vehicles to pass. (Maulana & Hejazziy, 2021)

### 2.3 Criminal Liability of Online Transportation Companies According to Positive Law

Traffic accidents that occur on highways are accidents that occur accidentally and of course unexpectedly which can result in human casualties or property damage. This is stated in Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law), precisely in article 1 number 24. Furthermore, it is also explained in the Law in article 229 paragraph 4 that serious traffic accidents are included, namely the occurrence of a traffic accident which results in the loss of the victim's life or someone's life. (Adriano, 2013)

Regarding the obligations and responsibilities of Drivers, Motor Vehicle Owners, and/or Transport Companies, based on Article 234 paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation states that both motor vehicle drivers, motor vehicle owners and All corporations or public transportation companies have responsibility for all losses experienced by passengers or experienced by property owners or third parties due to the driver's negligence. (Kusumastuti Novia, 2014) Then, based on article 236 paragraph 1 of Law Number 22 of 2009 concerning Road Traffic and Transportation, it states that any party who causes a traffic accident as in article 229 is obliged to compensate for losses. And the amount of these losses is determined by a court decision. Paragraph 2 also states that the losses that must be compensated in paragraph 1 are for traffic accidents as stated in article 229, specifically in paragraph 2, which can be carried out outside of court and there is an agreement between the parties involved in the traffic accident. (Kusumastuti Novia, 2014)

How to handle criminal cases by corporations can be seen in article 3 of PERMA RI no. 13 of 2016. Providing a statement in article 3 that criminal acts by corporations are criminal acts committed by people based on work relationships, or based on other relationships, either individually or individually. individually or collectively acting for and on behalf of the corporation inside or outside the corporate or company environment. (Kumala Sari & Putra Jaya, 2019)

### 2.4. Criminal Liability of Online Transportation Companies According to Islamic Law

According to Islamic law, the person who must be responsible for a crime is the criminal himself. This is based on the words of Allah in Surah Faathir, verse 18:

may Allah bless him and give him peace and blessings وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَإِنْ تَدْعُ مُثْقَلَةٌ إِلَىٰ ذَايِهَا فَاصْبِرْ ۚ لَئِنْ دَعَا بِهَا صَاعِقُ بَرْقٍ يَنْزِلُ أَسْفَلَ سَافِرِينَ  
وَإِنَّمَا يَتَزَكَّىٰ لِنَفْسِهِ ۗ إِلَىٰ اللَّهِ الْمَصِيرُ  
God willing

Meaning: "And a person who sins will not bear the sins of others. And if someone who is heavily burdened with his sins calls (someone else) to carry his burden, he will not bear it in the slightest, even if (those he calls are) his relatives. Indeed, you can only warn those who fear (the punishment of) their Lord (even if) they do not see Him and those who perform prayer. And whoever purifies himself, indeed he purifies himself for his own good. And to Allah is the return." (CRIMINAL LIABILITY IN TRAFFIC ACCIDENTS RESULTING IN DEATH AND INJURY, 2021)

One of the consequences of a fatal collision is the loss of a person's life. In Islamic criminal law, criminal acts or crimes committed with negligence or accidentally or semi-intentionally are often associated with criminal acts against the soul which are called murder or Qatl. Wahbah Zuhaili in his book, Islamic Fiqh wa Adillatuhu defines culpable homicide as "murder that occurs without any intention, desire or intention at all, either the action itself or the victim, such as someone intending to throw a tree or an animal, then the throw actually hits the person. dead". (CRIMINAL LIABILITY IN TRAFFIC ACCIDENTS RESULTING IN DEATH AND INJURY, 2021)

If a motorbike taxi driver's passenger dies in an accident, the driver tries to take responsibility for the incident and pay for the victim's treatment, even if the accident was



accidental. This is a type of responsibility for the driver of the object that caused the accident. taking responsibility for accidents before the law in an effort to make peace, but some of the victim's families are trying to take legal action because the loss of the victim's family is very disappointing.

### **2.5 Analysis of Islamic Criminal Law Regarding the Responsibility of Online Motorbike Taxi Companies**

According to the fuqaha agreement, there is no qishas punishment for crimes such as manslaughter, but there are only two legal sanctions: the main punishment of diyat and kafarat, and the additional punishment of loss of inheritance rights and the right to make a will.(CRIMINAL LIABILITY IN TRAFFIC ACCIDENTS RESULTING IN DEATH AND INJURY, 2021)According to Islamic criminal law, internet motorcycle taxi companies must be held responsible. If a motorbike taxi driver's passenger dies in an accident, the driver tries to take responsibility for the incident and pay for the victim's treatment, even if the accident was accidental.(Handayani & Alfauza, 2010)

A motorbike taxi driver who has an accident must respond, as in the following points:  
Basic Punishment The most severe punishment for accidental murder is diyat mukhaffafah (light diyat), which is equivalent to one hundred camels. Twenty hiqqah camels, twenty jazaah camels, twenty bintu Labun camels, twenty Ibn Labun camels, and twenty Ibn Makhadh camels make up this mukhaffafah diyat. And kafarat to free a believing servant. If the servant is absent, the punishment is replaced by fasting for two months.

Additional punishments such as cancellation of inheritance rights and wills imposed as a result of a crime. Furthermore, if the victim of a traffic accident does not experience death but is injured, then the perpetrator has criminal liability due to his negligence, then it is called or popularly known as diyat or ursy. If the crime that only causes the victim to suffer injuries is called al jinayah ala maa duni. Al Nafis.

Discussing the diyat that must be paid by the perpetrator because the victim was injured intentionally, which has the same meaning as accidental abuse, but for the first act, the perpetrator will be subject to heavy diyat and light diyat for the second perpetrator. The heavy diyat is 100 camels consisting of 40 Khilafah camels. 30 jazaah camels and 30 haqiqoh camels. For light diyat there are also 100 camels but different types of camels and the numbers include 20 makail, 20 haqiqoh, 20 jazaah, 20 bintulabun.

The following are the diyats for wounds according to the hadith narrated from An Nasai, namely, one diyat for the tongue, one diyat for both lips, one diyat for the man's testicles and eggs, one diyat for the spine, one diyat for both eyes, half a diyat for one leg, 1/3 diyat for ma'munah, 1/3 diyat for jaifah, 10 camels for each toe or each finger, 3 camels for just one tooth.(CRIMINAL LIABILITY IN TRAFFIC ACCIDENTS RESULTING IN DEATH AND INJURY, 2021)

### **3. CONCLUSION**

Articles 234, 236 and 237 of Law Number 22 of 2009 which regulate Road Traffic and Transportation limit the types of liability that must be provided by public transportation companies. Basically, public transport operators must compensate for losses. According to Islamic law, if a motorbike taxi driver's passenger dies in an accident, the driver seeks to take responsibility for the incident and pay for the victim's treatment, even if the collision was not an intentional accident.

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